

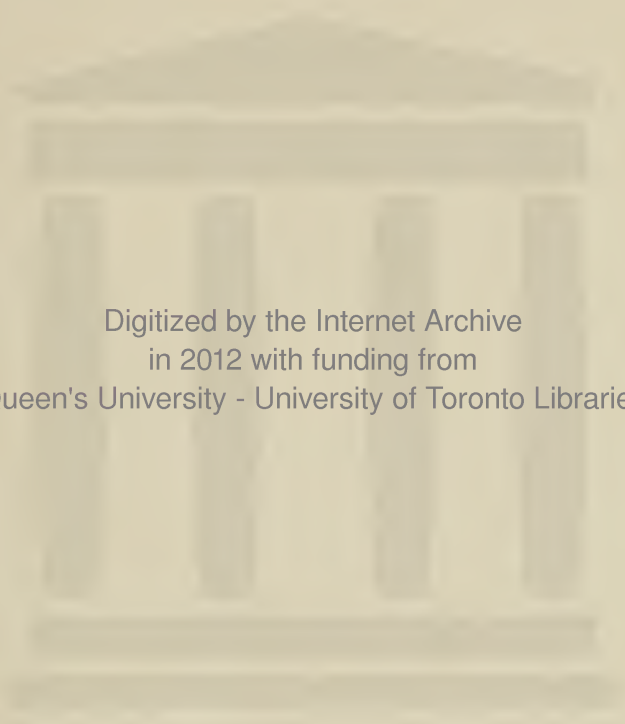
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REPORT

OF A

SELECT COMMITTEE OF THE

Legislative Council of Upper Canada,

UPON THE PROVISION MADE BY LAW

FOR THE SUPPORT OF A

PROTESTANT CLERGY IN THAT PROVINCE.

TORONTO:

Printed by R. STANTON, Printer to the King's Most Excellent Majesty.

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1835.

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REPORT &c.

THE SELECT COMMITTEE TO WHOM

was referred the Bill sent up from the House of Assembly entitled, "An Act for the disposal of the "Clergy Reserves in this Province for the purposes "of general Education," with instructions to report upon the principles and details of the Bill, and also upon the provision made by law for the support of Religion in this Province, as well as upon the questions which have arisen respecting it, and the measures which have been taken in England and in this Country in relation to the same, have examined into the matters referred to them, and have agreed upon the following Report, which they trust may serve to bring the subject under the view of your Honorable House in its several bearings, and in a connected manner :

When the Country which now constitutes the Provinces of Upper and Lower Canada became part of the dominions of the British Crown, it contained a population of about 65,000 inhabitants, lately subjects of the French King, among whom the Roman Catholic Religion exclusively prevailed. An Ecclesiastical establishment with Priests, Curates and Missionaries, probably adequate in number to the religious care and instruction of the community, had existed under the protection of the French Government, supported

by tithes, and by large endowments of real property derived from the Crown. In the articles of capitulation a very earnest and zealous desire was shewn by the French commander to guard the integrity of this provision, and to secure its perpetual continuance under the change of circumstances which the Colony was about to undergo, and to that end it was stipulated in the 27th and 34th articles of the capitulation, “ that the people should be obliged by the English
 “ Government to pay to the Priests the tithes they
 “ had been used to pay under the Government of the
 “ French King ; and that all the religious communi-
 “ ties, and the Priests, should preserve the property
 “ and revenues of the Seigniories, and other estates
 “ which they possessed in the Colony, and that the
 “ same estates should be preserved in their privileges,
 “ rights, tenures and exemptions.”

In the year 1774, when His Majesty and the British Parliament were making provision for the better government of the Province of Quebec, a just sense was shewn of the obligation to maintain, for the benefit of these Roman Catholic subjects of the Crown, the provision which had been made among them for the support of religion and the maintenance of public worship, for in the fifth and sixth sections of the Statute 14 Geo. 3. Ch. 83. it is expressly enacted, that the Clergy of the Church of Rome in the Province of Quebec “ may hold, receive and enjoy, their accus-
 “ tomed dues and rights with respect to such persons
 “ only as shall profess the said religion” : and with

due regard to the interests of his Protestant subjects, it was further enacted, "that it should be lawful for His Majesty, his Heirs or Successors, to make such provision out of the rest of the said accustomed dues and rights for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant Clergy within the said Province, as should from time to time be thought necessary and expedient."

In the year 1791, His late Majesty King George the Third, whose memory will ever be revered in this Colony, deemed it expedient to divide the Province of Quebec into two separate Provinces, to be called Upper and Lower Canada; and in the Royal message sent to Parliament for the purpose of recommending the enactment of the necessary provisions for the good government of the said Provinces, His Majesty was pleased to express his desire "to be enabled to make a permanent appropriation of lands for the due and sufficient support and maintenance of a Protestant Clergy within the said Provinces, in proportion to such increase as might happen in the population and cultivation thereof."

By this time (1791) a considerable number of persons of British origin had settled in Canada; and it may be observed in how much more express and particular a manner the intention to provide for the support of the Protestant religion is announced in this Act, than it had been in the one which was passed

in 1774. In that Statute the principal object of attention evidently was to guard the rights of those who instructed the people in the prevailing religion, by giving the sanction of the law of England to the exaction of those tithes and dues, which had been yielded to the Clergy under the French government. It was deemed equitable to exempt from the payment of them such British subjects as were not members of the Roman Catholic Church; and inasmuch as from them no tithes were to be demanded by the Clergy of the Church of Rome, it was enacted, that out of the *rest of the said* accustomed dues and rights, that is, out of those tithes or dues payable by Protestants, and therefore not to be received by the Roman Catholic Clergy, His Majesty might make provision for the maintenance and support of a Protestant Clergy. Instead of this provision, burthensome in its nature and not certain to be sufficiently productive for the maintenance of a Clergy among a widely dispersed population, the Act of 1791 made a much more just, adequate, and satisfactory provision by the allotment of lands in the proportion therein specified. His Majesty had, as we have already noticed, desired in his message to Parliament “that such appropriation should be permanent, and such as might best conduce to the due and sufficient support of a Protestant Clergy in proportion to such increase as might happen in the population,” and Parliament in this Statute which they passed, declared their resolution of “fulfilling effectually His Majesty’s gra-

“ cious intentions, and of providing for the *due execution of the same in all time to come.*”

In a series of clauses* forming a great portion of that Statute from which we derive our Constitution and form of Government, direction is given to set apart such allotments of land in this Province as should be equal to one-seventh part of the quantity of land granted by His Majesty. The most scrupulous care is taken to ensure the appropriation being made, and it is expressly declared, “ that all and every the rents, profits or emoluments which may at any time arise from such lands so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant Clergy within the Province, in which the same shall be situated, and to no other use or purpose whatever.”

Particular provisions are next made respecting the erection of Parishes, and the presentation of Incumbents ; and it is then enacted, that the several provisions in the Statute respecting the allotment and appropriation of lands for the support of a Protestant Clergy, and also respecting the constituting, erecting and endowing Parsonages or Rectories, and the presentation of Incumbents or Ministers to the same, and the manner in which such Incumbents or Ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provision for

* For these clauses of the British Statute 31. Geo. 3. Chap. 31. see Appendix .2.

that purpose, contained in any Act or Acts which may be passed by the Legislative Council and Assembly of this Province, and assented to by His Majesty : Provided that no Act, for any of these purposes, shall be assented to by His Majesty, until thirty days after it shall have been laid before both Houses of Parliament in Great Britain ; nor shall it be assented to, if within thirty days, either House of Parliament shall address His Majesty to withhold his assent therefrom.

These are, in substance, the provisions by which public support is ensured for the maintenance of the Protestant Religion in this Province. It will be remarked, that they are framed with great care and circumspection, and with an evident desire that the provision should be permanent, and commensurate with the growing wants of the population. Different opinions, as your Committee is aware, have been entertained respecting the power over this provision given to the Provincial Legislature by the 41st Section of the Act ; some persons conceiving, that it extends only to the repeal of those Clauses of the British Statute which authorise allotments of land to be made, after which repeal any further appropriation of lands, for the objects specified, would from thenceforth cease ; while others maintain that it enables the Provincial Legislature not merely to interfere prospectively, but to repeal and undo as it were, the effect and past operation of the British Statute, or, in other words, to abolish, at any time, whatever endow-

ment might be in existence in consequence of the executed provisions of the Act, and thus to leave Religion totally and absolutely without public support in the Colony. Your Committee merely advert to the doubt which has been raised on this point, and express no opinion upon it. It becomes the less material to determine which construction is proper, when it is considered that no Act passed by this Legislature affecting the Reserves in any manner can have the force of Law, unless it meets with the approbation of every branch of the Imperial Parliament.

The earnest attention with which the Sovereign and Parliament of Great Britain desired to secure an adequate support for a Protestant Clergy within this Colony, is especially worthy of remark, when it is remembered, that in the period which intervened between the passing of the Statute 14 Geo. 3, and the Statute in question, a vast change had taken place in regard to the dominions of the Crown on this continent. A revolution had, in that interval, deprived Great Britain of Colonial possessions more extensive and valuable than can ever again be acquired by any Nation in the world. From various causes, and perhaps chiefly from the peculiar circumstances under which the most considerable of these Colonies had first been settled, it had happened that the Parent State had abstained from laying in any of them, the foundations of an Ecclesiastical establishment : besides therefore, the experience on the one hand of the effect which the maintenance of a resident and regular Clergy

had upon the interests and happiness of the United Kingdom, His Majesty and the British Parliament had the opportunity on the other hand, of judging from recent events, how far the neglecting to make any such provision among a people was likely to prove consistent with the stability of Government, and with a sound moral and religious condition of society.

The result of a mature consideration of the subject seems to have led the King and his Parliament to the resolution of making an adequate provision for the support of Religion, and to protect that provision with scrupulous care.

At the time this foundation was laid, Upper Canada was supposed to contain 10,000 inhabitants, chiefly of British descent; the population at present is, probably not less than 350,000, a small proportion of which is contained in Towns and Villages, and the remainder dispersed over a country not less in extent than England and Wales, and inhabiting about 300 Townships or tracts of land, each of which is nearly ten miles square. Allotments of land, called Clergy Reserves, have been regularly set apart since the passing of the Statute, in proportion as grants of land have been made to individuals, and these Reserves have been usually distributed through the Townships, in lots of 200 acres each. For many years these lands produced little revenue, there being no power to alienate them, even if a suitable price could have been obtained; and so long as the Crown

was in the course of making Grants in fee simple, many of them gratuitously, and others on the payment of a moderate fee, to almost every one who applied for them, it was not to be expected that a considerable revenue could be obtained from rents of uncleared lands.

The fact is, that although a considerable number of lots were leased, the rents were very trifling, and were irregularly paid; and the few Clergy of the Church of England who were stationed in the Province, were indebted to the Society for Propagating the Gospel in Foreign Parts, for their support.

Things were in this state until some time between the years 1819 and 1821, or nearly thirty years after the passing of the Statute, when, for the first time, as your Committee believe, a question was raised respecting the proper legal construction of the Act, and the intention of the Parliament in passing it; and it was in this manner that the question arose. The 39th section of that Statute, it will be perceived, is very explicit and comprehensive in regard to the rights which an incumbent shall possess upon being inducted into a Rectory or Parish in Upper Canada, when any shall be erected. The Legislature of the Province seemed clearly to apprehend that it could not have been intended that tithes should be demandable, considering the provision which Parliament had made for supporting a Protestant Clergy, by an appropriation of lands, and conceiving that an explicit declaration to this effect ought to precede any mea-

sure for dividing the Province into Parishes, a short Act was brought into the Legislature for that purpose, which passed the two Houses, but being necessarily reserved for the assent of His Majesty, it failed to receive attention in England, until the limited period of two years had elapsed, and it could not therefore become a law. In the year 1821, a similar bill was passed, which being sent to England, was assented to in 1823, and is printed in our Statute Book, page 602.*

This Bill met with no opposition that we are aware of, and excited little or no discussion; its object, obviously, was just and reasonable; no imagination that a claim to tithes would ever be advanced by a Clergyman of the Church of England in this Province, had probably entered into the minds of any one; and it was from extreme caution, and most probably from a desire to remove any obstacle that might seem to exist to the erection of Parishes, that the suggestion of such an enactment arose.

During the little attention to the subject of the Clergy Reserves, however, which the pendency of this Bill excited, an opinion was advanced that the words "a Protestant Clergy," used in the 31 Geo. 3, were applicable to the Clergy of the Church of Scotland as well as of the Church of England, and that *that* Church being established in one portion of the United Kingdom, the right of her Clergy to be supported from

* See copy of this Act, Appendix B.

the Reserves was apparent on the Statute, and was also capable of being supported, under the articles for the union of the two Kingdoms.

This claim, on the part of the Church of Scotland, was from that period advanced and persevered in: the arguments in favor of it, and those in opposition, have been from time to time placed before His Majesty's Government in various shapes; but up to this time, as the Committee apprehend, no decision of the question has been pronounced by any Judicial authority, nor any definite measure taken in consequence.

In this country, where the first conception of such a claim seems to have originated, it is manifest it could not be finally decided, and therefore it is, perhaps, unfortunate that it should have been agitated here, since the discussion has hitherto led to no decisive result, and has been injurious, in no small degree, to the public interests and tranquility. It soon led the way to less definite pretensions, and to claims which have depended for their support rather upon the feelings which could be excited by a course of industrious agitation, than upon any reasonable construction or constitutional principle. In a short time after a claim was put forward on behalf of the Church of Scotland, it began to be asserted that the term "a Protestant Clergy" might, in law, and ought in equity to receive such a construction as would comprehend the Ministers of every denomination of

Protestants, of which denominations there are in this Province at present many varieties, and to these many more may from time to time be added. A claim, however, to have the Reserves, or their proceeds distributed among the several Sects has not been strenuously pressed, perhaps from the conviction that such a measure must obviously fail in affording an adequate support for Christianity in any form ; or, perhaps, from a consideration of the never ending jealousies and contests to which the attempt at a proportionate distribution must give rise.

In 1827, His Majesty's Government proposed and procured from Parliament, an Act authorising the sale, annually, of a limited portion of the Clergy Reserves, not to exceed in any year 100,000 acres, nor more in the whole than one-fourth of all the lands reserved. *

In this Act Parliament gave no evidence of any change of intention, in regard to the principles declared in the Stat. 31 Geo. 3 ; on the contrary, the proceeds of the sales are expressly directed to be applied " either " for the improvement of the remaining part of the " said Clergy Reserves, or otherwise, *for the purposes " for which the said lands were so reserved as afore- " said, and for no other purpose whatsoever.*" Thus any doubt which may have arisen upon the construction of the former Statute, 31 Geo. 3. was not cleared up when Parliament were again legislating upon the

* See Appendix C.

subject, nor was the legal effect of that Statute in any respect changed. The objects of this recent Statute seem to have been, to render a portion of the Reserves more immediately available for the support of Clergymen, by raising a fund to be applied in clearing and improving them; to diminish the pretence for complaining that the Reserves obstructed the settlement of the country, by providing for their gradual alienation; and to enable the Crown to change any of the Reserves for other lands either belonging to the Government or to individuals, when such an exchange might seem desirable for any purpose.

In 1828, the petitions and complaints proceeding from the adjoining Province of Lower Canada, and the difficulties which had occurred there, occasioned the affairs and interests of that Province to be brought under the consideration of the House of Commons; and in the course of an inquiry conducted by a Committee of that House, the subject of the Clergy Reserves was examined and considered, with reference to both these Provinces. The Attorney General, Solicitor General, and Advocate General of England, had, as it appears, been called upon in 1819, to give an opinion on the proper construction of the 31 Geo. 3. in regard to the words "Protestant Clergy," and it will be seen from their opinion, which we subjoin in the Appendix,* that in their judgment, the Church of England alone could be endowed with any portion of the

* Appendix D.

lands ; that pecuniary assistance, however, might be contributed to the support of the Clergy of the Church of Scotland out of the rents or profits of the Reserves, in the discretion, as they apprehended, of the Colonial Government ; and that dissenting Ministers, not belonging to either of the national religious establishments, did not come within the term “ *Protestant Clergy*,” and could not therefore participate in the provision.

The Committee of the House of Commons having this opinion of the Crown Officers before them, declined expressing their own in regard to the proper legal construction of the Act ; but, without defining what sense they give to the term “ Clergy,” they seemed inclined to consider that the Church of England alone was intended to be endowed with lands ; but, that with respect to the proceeds of the reserved lands, generally, the Government might apply the money, if they so thought fit, to any “ *Protestant Clergy*.”

The learned Counsel for the Colonial department, Mr. STEPHEN, on his examination before the Committee, seems to have taken a middle course between the Crown Officers and the Committee, giving it as his opinion that no Clergy but those of England and Scotland can participate either in the Reserves, or in the proceeds of them, but that in respect to the lands themselves, although the Clergy of the Church of England alone could receive endowments of any portion of them as parochial Ministers, yet the Crown might authorise

a part of them to be appropriated in perpetuity to the *sustentation of Clergymen of the Church of Scotland*. Thus upon the occasion when this provision was most openly and minutely discussed in England, any doubts which had arisen upon the construction of the Statute were so far from being satisfactorily disposed of, that the Crown Officers, and the learned Counsel for the Colonial department, while they agreed in some respects, differed in others ; and the Committee having their opinions before them, declined the attempt to dispose of the question as a legal question, but express sentiments as to the intention of Parliament which are not in accordance with either.

The Report of this Committee, however, independently of the general and inconclusive terms in which their views are expressed,* could for no purpose be properly appealed to as decisive of the questions which had arisen, since the Members of that Committee formed but a portion, and a small portion, of one branch of the Legislature, and even in that House from which they were delegated, no vote of concurrence in the Report was ever taken or proposed, that your Committee is aware of; nor does the Report seem to have been deliberately and expressly brought into discussion in either House, in any Parliamentary proceeding. The Committee in their Report, indeed, “earnestly press the early consideration of the sub-

* See Report of Committee, Appendix E.

“ject of the Reserves upon his Majesty’s Government, “with the view to an adjustment that might be satisfactory to the Province,” but unfortunately at this distance of time, seven years nearly having elapsed since their Report, the whole matter remains in the same state as at the time of their making this recommendation.

In 1831, the Legislative Council of this Province, feeling much anxiety for the speedy and certain adjustment of a matter so deeply interesting in its nature, united in an address to his Majesty, of which a copy is subjoined, and in which the sentiments of the Council, in regard to this important subject, are distinctly expressed.*

That address does not appear to have engaged the consideration of his Majesty’s Government, at least, your Committee are not aware that it has been acknowledged or adverted to in any communication from the Colonial department. It may, nevertheless, have contributed, with representations from other quarters, to call the attention of the Government to a subject which appears to have occupied much of their thoughts. The result of the further consideration bestowed by his Majesty’s Government upon it was communicated to the Legislature by his Excellency the Lieutenant Governor, in 1832, in a message in which it will be perceived, that his Majesty’s Government “invites the Legislature to consider how the

* Appendix F.

“powers given to them by the Statute (31 Geo. 3. chap. 31.) to vary or repeal its provisions, in respect “to the support of a Protestant Clergy, can be called “into exercise most advantageously for the spiritual “and temporal interests of his Majesty’s faithful subjects in this Province.” The Legislature were further put in possession of the views and desire of his Majesty’s Government in more definite terms, for in the House of Assembly a bill was introduced by the Attorney General, as appears by the Journals, the principal object of which was to vest the Clergy Reserves in his Majesty, discharged from all trusts that had been created by the Statute 31 Geo. 3. The message with the draft of this bill, were printed by order of the House of Assembly, and a copy is subjoined to this Report.† The bill was merely introduced into the Assembly in that Session, and was no further proceeded in. In the following Session of 1832–3, the same bill seems to have been again introduced into the Assembly by the Attorney General, when it was read the first time, and moved in no further.

In 1834, a Bill similar to that which has been submitted to your Committee to be reported upon was brought into the Assembly. Its object is distinctly in opposition to that which had been introduced by the Attorney General, in conformity to the wishes expressed by his Majesty’s Government ; for instead of

† Appendix G.

providing that the Clergy Reserves should be vested in his Majesty, discharged of all trusts, in which case his Majesty could make such disposition of them as might seem expedient, either for the support of religion, or for any other purpose,—the object of the bill introduced in 1834, was to enable certain Commissioners nominated by the Assembly to sell the Clergy Reserves, and to pay over the proceeds to the Receiver General, to be disposed of for the promotion of education, under the direction of the Legislature, and for no other purpose.

Your Committee need scarcely recall to the recollection of your Honorable House that a Bill, the same in substance, was passed by the Assembly in 1830, and rejected by the Legislative Council. In 1834, when it was again introduced into the Assembly, as we have just stated, the opportunity was resorted to, as appears by the journals of the Assembly, of taking the sense of that House in regard to the measure that had been proposed under the sanction of the Government in the year 1832. An exact transcript of that Bill was moved to be substituted by way of amendment, in the place of the one introduced, but it was rejected, as it appears, by a vote of 27 to 7, and the measure recommended by the Government being thus negatived, the original bill similar to that which has been referred to your Committee, was proceeded in, and passed by the Assembly, but it was rejected by the Legislative Council, as it had been in 1830.

No measure has at any time originated in the Legislative Council in consequence of the message of his Excellency the Lieutenant Governor, in 1832; nor has any occasion arisen for taking the sense of the Legislative Council, in regard to such an enactment as is understood to have been recommended by his Majesty's Government.

YOUR COMMITTEE having thus endeavored to bring under view the facts and measures which have preceded the introduction of the Bill now referred to them, beg leave next to report upon the objects and provisions of that Bill,* which they have carefully examined; and before adverting to the principles and details, your Committee think it not immaterial to remark, in respect to the grounds and reasons set forth in the preamble as the inducement to passing the Act :

- 1st. That in reciting the provisions of the 31 Geo. 3. chap. 31, it is not set forth that his Majesty's message to Parliament expressly proposed a *permanent* provision for the support of religion, which message is recited

* Appendix H.

in the Act, and that it is expressly avowed in the 36th clause “to be the intention of “Parliament to fulfil his Majesty’s gracious “intentions, and to *provide for the due execution of the same, in all time to come.*”

2dly. That it is alleged, “that the Bishop and “Clergy of the Church of England pretend, “contrary to the spirit and meaning of the “Act, to have an exclusive right to the Re- “serves, and to the rents, &c. arising from “them;” for which allegation, though it would seem to imply the setting up an unexpected and unreasonable claim on the part of the Church of England, it must in justice be stated that there is no other ground, than that when a claim was for the first time advanced on the part of one or more Churches to share in the provision, nearly thirty years after the Statute was passed, the Church of England endeavored to resist the efforts made to lessen or deprive her of the endowment, and acting on the defensive has contended for that construction of the Act, which up to that time, so far as we are aware, was never publicly called in question.— Your Committee states these facts, without prejudice to the claim of any other Church.

3dly. That it is stated, “that notwithstanding “such pretensions of the Church of Eng-

“land, and the liberal pecuniary aid annually enjoyed by the Ministers thereof, from a benevolent Society in England, the number of that Church is small, when compared to the number of some other sects of Protestants in this Province.” In regard to this allegation your Committee have to remark, in the first place, that the aid formerly enjoyed from the benevolent Society alluded to, however liberal in proportion to their resources, clearly must have been, and always was very inadequate to the supply of a resident Clergy throughout this extensive Colony; and inadequate as it necessarily was, it has recently been withdrawn,* and withdrawn too, as your Committee find, in consequence of the hope held out by his Excellency the Lieutenant Governor of this Province that an equal sum might soon be derived from the very provision which it is the object of this Bill to repeal: and in the next place, your Committee cannot express their concurrence in the statement, that the number of members of the Church of England in this Province is exceedingly small, when compared to the number of many other sects of Protestants; because your Committee are confident in the opinion, that the

* See Appendix I.

members of the Church of England in Upper Canada, form a very numerous body dispersed generally over the country, and without desiring to speak disparagingly of any other Church, they will add that the language used in this part of the preamble is calculated to convey a very erroneous impression in regard to the actual state of the Church of England in this Colony, which when her numbers were very much smaller was never so spoken of, until the design began to be entertained of depriving her of the provision in question.

UPON THE GENERAL OBJECTS OF THE BILL, your Committee beg to observe, *first*, that this measure is intended expressly and avowedly to abolish totally the provision made by the 31 Geo. 3. for the support of the Protestant religion in Upper Canada, without proposing to substitute in its place any other provision, for the same object, to any extent. 2dly. That in proceeding to carry this intention into full execution, the Bill provides for appropriating the proceeds of sales made under the authority of the Imperial Statute, passed in 1827, although the manner in which they shall be disposed of is expressly declared in that Statute. In this respect the Bill assumes directly to overrule the enactments of Parliament.

Upon the reasons given in the Bill for this total abolition of the provision made by law for the support of the Protestant religion, your Committee offer no remark, and they forbear from intruding upon your Honorable House any arguments of their own upon a question involving principles of so extensive and important a character that it is impossible the considerations attending it can fail to present themselves upon a general discussion of the measure.

Your Committee, therefore, proceed in the next place to remark upon the *details* of the Bill, by which it is proposed that this object shall be accomplished, and upon these they beg leave to state :

1st. That although it might seem a reasonable consequence of repealing the enactments under which the Clergy Reserves are appropriated, that those Reserves should revert to his Majesty, upon whose gracious suggestion they had hitherto been set apart for so indispensable a purpose as the maintenance of Religion, and that they should remain from thenceforth at the disposal of his Majesty, with other lands of the Crown ; yet this Bill proposes a very different method of dealing with them, and provides that instead of being granted as his Majesty may think fit, they shall be sold as the Legislature may direct, for purposes which they shall appoint,

and by Commissioners whom they have nominated ; and no direction is given for an account to be rendered to his Majesty, through the Lords of the Treasury, of the receipt and expenditure of the monies, as is usual in regard to all other public monies received and expended in the Colonies.

2nd. That the whole of the Reserves may be sold in four years by the Commissioners, at whatever price they may be willing to accept for them.

3d. That the Commissioners are all named by the Assembly, one being selected for each District, twelve in all : that of these twelve, six are members of the Assembly, and five are persons who were formerly in the Assembly, but none are members of the Legislative Council, or serving in any department of the Executive Government.

4th. That it is provided, that the *House of Assembly* may, after the Act is passed, at any session of the Legislature, appoint, by vote of the House, any person to be Commissioner instead of any Commissioner named in the Act ; a provision which appears to your Committee to be so extraordinary, that it cannot be necessary to enlarge upon it.

- 5th. That upon the sales which the Commissioners shall make of them, the Government are to issue patents free of any cost, though no provision is made for meeting the charge of preparing those patents, and though the Government is to have no control over the proceeds of those sales.
- 6th. That each Commissioner is to give security in £1000, and to have authority to receive all the monies paid for Reserves sold in his District, of which there are some so valuable that three or four lots would produce a sum larger than the whole extent of the security.
- 7th. That the monies are to be disposed of by the Legislature, for the support and promotion of Education, and to no other purpose whatever, it being clearly stated in the Bill that the education spoken of is not to include religious instruction or public worship through the ministry of any clergy supported by this fund ; and it is worthy of remark, that this measure is introduced after the Legislature have been for three years entrusted by the voluntary surrender of the Crown, with the management of very large tracts of land formerly set apart expressly for the maintenance of Schools, in the course of which three years not one step has been

taken, nor any measure proposed for the concurrence of the Legislative Council, for turning that liberal endowment to account.

Upon these provisions of the Bill, your Committee do not think it necessary to enter into any particular discussion; they are merely pointed out to the attention of your Honorable House: and your Committee omit to remark upon many minor points in the details, which struck them as obviously unadvisable or improper, thinking them of slight importance, in comparison with the objections which appear to your Committee to exist against the general principles and scope of the Bill.

YOUR COMMITTEE have already stated that it was not their intention to enter upon a discussion, or even upon a statement of the arguments which have been used or may be used, for or against the claim of right advanced by the Church of Scotland, or in behalf of any other denomination of Christians; and for the same reasons for which they have omitted this, they have avoided also engaging in any discussion of the reasons for or against the maintenance of a Religious Establishment, whether those reasons are of general application, or such as may be deduced from the present condition and future prospects of this Colony—All these considerations are too important to be in their nature overlooked, and before the question now pending can be finally decided by the only competent

authorities, namely, the King and Parliament of Great Britain, they must, and doubtless will be maturely weighed and wisely and justly disposed of. To shew what has been done and attempted, for the purpose simply of presenting a connected view of facts and proceedings in relation to this interesting subject, has been the endeavor of the Committee; and the following summary, deduced from what they have related more at length, will perhaps tend to bring the whole matter more clearly in review.

From what the Committee have stated, it will be seen that his late Majesty, King George the Third, having acquired the territory which now forms the Province of Upper Canada, gave immediate assurance of his protection and support to the prevailing Religion of the country, which he found established.

That Parliament, a few years after, (1774,) secured to the Clergy of that Religion, by Statute, the full enjoyment of their accustomed dues and rights, giving them the sanction of law for the exaction of tithes; that in the same Statute; the British Parliament declared their intention of providing for the encouragement of the Protestant Religion, and for the maintenance and support of a Protestant Clergy within the Province of Canada. That this intention was carried fully and effectually into execution, in the year 1791, when his Majesty called upon Parliament, by Royal Message, to concur with him in making a permanent appropriation of lands, in both the Provinces of Cana-

da, for the maintenance and support of a Protestant Clergy, and when Parliament, in consequence of that Royal Message, declared their purpose of effectually fulfilling his Majesty's gracious intention, and of providing for the due execution of the same in all time to come, and proceeded by the Statute, 31 Geo. 3. c. 31, to authorise the setting apart the allotments of land which form "the Clergy Reserves."

That the enactments contained in this Statute, for effecting this declared object of his Majesty and the British Parliament, have not to this time been altered by any subsequent Statute in any particular that can affect their legal operation ; so that, in order to determine what right the Church of England or Church of Scotland, or any other religious community can legally claim in the Clergy Reserves or the proceeds of them, the question is still confined to the words of that Statute, aided by such helps to the construction of it as can properly be admitted from the circumstances under which the Statute was passed, the history of its passing, the evidence of contemporaneous construction, and the light in which its provisions have been found to be viewed, and the understanding with which they were carried into effect by those with whom it properly rested to place a construction upon the Statute, in Great Britain and in the Colony.

That about thirty years after the passing of the Act, questions were raised upon the object of its provisions ; and the members of the Church of Scotland,

in particular, advanced a claim to participate in the Reserves, or their proceeds,—*first*, on the ground that that Church is included in the words of the Statute ; and *secondly*, on the principle that, as a National Church, she has a just claim to support, and ought to be considered as coming within the spirit and intention of the Statute, unless the words can be shewn expressly to exclude her :

That not long after, application was made to the Legislature of the Colony and to the Government in England, on behalf of all other denominations of Protestants generally, setting forth a claim on their part to participate in the advantages of the Clergy Reserves, which claim, it is proper to mention, received the support of the House of Assembly :

That upon the claim of the Church of Scotland, or of any other religious community, grounded upon the legal operation of the Statute, no decision has yet been pronounced by any judicial authority empowered to determine the question :

That the Crown Officers in England have (in 1819) expressed a qualified opinion in favor of the Church of Scotland, as regards the discretion of the Government in allowing her to participate in the rents and proceeds of the Reserves, but not as regards the right of her Clergy to hold any portion of the same, in the nature of parochial endowments :

That the legal adviser of the Colonial Department has expressed an opinion that the Church of Scotland may, if his Majesty thinks fit, have a portion of the lands set apart for the support of her Clergy; and may also, in the discretion of the Government, be allowed to share in the rents or proceeds of the land :

That these legal advisers of the Government all concur in the opinion, that the term "*Protestant Clergy*" used in the Statute, cannot be extended to the Ministers or Preachers of any dissenting Sect, not forming a Church established by law :

That although the construction of this Statute has been in question about fifteen years, no express declaration has been made by either House of Parliament in England upon the subject, nor any act done from which the understanding of either House might be implied :

That a Select Committee of the House of Commons have deliberated upon the Act, and that having received opinions respecting it, and examined witnesses, they have made a report in which they decline venturing any opinion upon the legal effect of the Statute, but express their conviction that it was intended by its provisions to enable his Majesty, if he should think fit, to apply the money arising from the Reserves to any Protestant Clergy—not, however, expressly defining what they mean by the term "*Clergy* :"

That this report did not, as your Committee believe, undergo a public discussion in the House of Commons in the Session in which it was made, nor at any time afterwards ; nor has a vote of concurrence in the report ever been proposed in that House, within the knowledge of your Committee :

That his Majesty's Government have evidently an earnest desire to arrive at a satisfactory adjustment of the question, and so recently as 1832, have communicated to the Legislature of this Province a proposition, that the Reserves should, by a Colonial Act, be vested in his Majesty discharged from any trust created by 31st Geo. 3. :

That in this communication his Majesty speaks of the Reserves "as having been set apart as a provision
"for the Clergy of the Established Churches of Eng-
"land and Scotland, declaring the sacred obligation
"incumbent upon him to watch over the interests of
"all the Protestant Churches within his dominions,
"and that his Majesty can never consent to abandon
"those interests, with a view to any objects of tem-
"porary and apparent expediency":

That to this recommendation of his Majesty respecting the vesting of the Clergy Reserves in the Crown, discharged from any trust, no effect has yet been given. That a measure for that purpose has been expressly rejected in one branch of the Legislature, and a Bill introduced of a different nature, which

has for its object the total abolition of this provision for the support of Religion, and the depriving the Crown of the right to dispose of the lands, which, in case of repealing the provision in question, ought, in the opinion of your Committee, to revert to his Majesty :

That the Protestant Religion has no assurance of public support for its Ministers of any denomination in the Province of Upper Canada, except such as may be derived from the Reserves in question ; nor does it appear to your Committee that such support can be looked for from any other resource.

This being the actual state of the question, your Committee believe it may be confidently assumed that no Bill of such a nature as is now before them will receive the concurrence of the Legislative Council : and indeed it is manifest that, if there were no doubt as to the power of this Legislature to pass such a Bill, subject to the confirmation of his Majesty and the British Parliament, the attempt to do so could not be successful ; for it is not to be supposed that his Majesty and the British Parliament will disregard obligations admitted to be sacred, and surrender interests which his Majesty has solemnly pledged himself *"should not be abandoned with a view to any objects of temporary and apparent expediency."*

Your Committee conceives it must be sufficiently evident that no prospect whatever exists of effecting a final settlement in regard to the Clergy Reserves by

any Act to be passed within the Colony. Without contending for the interests of any particular Church, or asserting or denying the validity of any claim that has been advanced, your Committee is most desirous of impressing upon your Honorable House the propriety of interceding with his Majesty and the British Parliament to bring this long pending question to a decided and final termination. The continual agitation of the claims which have been advanced, and the indulgence of hopes which may or may not be ultimately fulfilled, have a most unfavorable influence upon the spiritual and temporal welfare of the people of this Colony. The difficulty is rather increased than diminished by delay; and your Committee is persuaded that no greater service could be rendered by the Mother Country to this Province than the putting a period, by an explicit and just measure, to all further contests and fruitless expectations in regard to the Reserves.

It is obvious that no Act that can be passed here can be effectual, unless it meets the approbation of his Majesty and both Houses of the Imperial Parliament. With that supreme authority it therefore rests to dispose of the question; and your Committee are persuaded that the Legislative Council will not hesitate to declare their readiness to submit, with cheerfulness, to whatever course they may think it just to adopt. With this view, your Committee have proposed several Resolutions, which, if they shall be approved of by the Legislative Council, your Committee recom-

mend to be sent to the Assembly for their concurrence, in order that a joint address to his Majesty and both Houses of Parliament, may be framed upon them. If the House of Assembly should not concur in them, then your Committee recommend, that an address from the Legislative Council should be transmitted to his Majesty and both Houses of Parliament, framed in conformity to the Resolutions ; and that a copy of this Report, and the documents appended to it, should accompany the address.

It has occurred to your Committee that it may appear just and reasonable, that before the interposition of Parliament is exercised, the legal claims which any party may have advanced, or may desire to advance, under the 31 George 3. chap. 31. should, if possible, be decided upon, and the rights of all ascertained by the judgment of some competent tribunal, if that can be effected. Upon that point it is material to observe, that under a Statute passed in England so lately as in August 1833, a provision is made, which it appears to your Committee would completely meet this object. By the Statute referred to, (3d and 4th William 4th, chap. 41.) a tribunal is constituted, called the "Judicial Committee of the Privy Council," to consist of the President of his Majesty's Privy Council for the time being, the Lord High Chancellor, such of the Members of the Privy Council as hold any of the offices following, namely, Chief Justice or Judge of the King's Bench, Master of the Rolls, Vice-

Chancellor of England, Chief Justice or Judge of the Common Pleas, Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court, Judge of the High Court of Admiralty, Chief Judge of the Court of Bankruptcy, and all Members of his Majesty's Privy Council who shall have been President thereof, or held the office of Lord Chancellor of Great Britain, or any of the other Offices before mentioned, and also any two other Members of the Privy Council whom his Majesty may choose to appoint. The tribunal thus composed is to have all the Jurisdiction incident to the former Court of his Majesty in Council, as a Court of Appeal from the Colonies and Plantations, with powers very considerably enlarged; and it is expressly enacted in the fourth section of the Statute, "that it shall be lawful for his Majesty to refer to the said Judicial Committee, for hearing or consideration, any such other matters whatsoever as his Majesty shall think fit, and such Committee shall thereupon hear or consider the same, and shall advise his Majesty therein." Thus it is plain that the opinion of this Judicial Committee may be had on the true legal construction and effect of the Statute 31 Geo. 3, although no litigation respecting it is depending in any Court; and if his Majesty, at the request of any of the respective claimants, should think fit under this clause of the Statute, to refer to this most respectable Tribunal, such legal questions as have arisen upon the provision made for the support of Religion under the Statute 31 Geo. 3,

chap. 31. their decision, after sufficient opportunity having been afforded to any party interested to be heard before them, must, in the opinion of all reasonable persons, be considered as conclusive in respect to the legal right.

All which is respectfully submitted.

(Signed)

THOMAS CLARK,

CHAIRMAN.

Committee Room of the Legislative Council,

4th April, 1835.

RESOLUTIONS

Reported by the Select Committee, and afterwards adopted by the Legislative Council, and sent to the House of Assembly, for their concurrence.

The Select Committee appointed to report upon the Bill entitled "An Act for the disposal of the Clergy Reserves in this Province, for the purposes of general Education," have taken the same into consideration, and concur in not recommending it to your Honorable House, but have agreed upon certain Resolutions, which they beg leave to offer for its adoption.

Resolved.—That His late Majesty, King George the Third, having been graciously pleased, by message to both Houses of Parliament, to express His Royal desire to be enabled to make a permanent appropriation of lands in this Province for the support and maintenance of a Protestant Clergy within the same, provision was made for that purpose by Parliament, in the Statute passed in the 31st year of His Majesty's reign, chap. 31st, by directing a reservation of lands to be made and set apart, in the proportion of all the lands that should be granted by His Majesty in the said Province, and by declaring that all and every the rents, profits or emoluments, which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applied solely to the maintenance and support of a Protestant Clergy within the Province, and to no other use or purpose whatever.

Resolved.—That such allotments and appropriations as the Act directs having been made from time to time, and continuing to be set apart, under the designation of Clergy Reserves, a claim was advanced in the year 1821, on behalf of the Church of Scotland, to be allowed to share in those Reserves, or in the rents, profits or emoluments, to be derived from them; which claim was made, and has been urged upon the footing of a legal claim, grounded on the construction of the Statute, and on the rights of the Church of Scotland as a Church established in one part of the United Kingdom.

Resolved.—That it has been advanced by other portions of the people of this Province, that all Protestant denominations have a right, in common with the Church of England, to have their Clergy supported from the Reserves in question, and that no exclusive right can be vindicated under the Act, in favor of any one or more Protestant Churches.

Resolved.—That efforts have also been made to procure a total abolition of this provision for the support of religion, by obtaining an Act of the Provincial Legislature, directing the sale of the Reserves, and the appropriation of the proceeds to purposes of general Education.

Resolved.—That by these conflicting claims and opposing views, in regard to a subject of so great interest and importance, the minds of His Majesty's

subjects in this Province have for a long period been rendered anxious and unsettled, and in the opinion of the Legislative Council, it is, for many reasons, much to be desired, that a speedy and final settlement should take place of the questions which have arisen upon the effect of the enactments referred to, and that it should be plainly, certainly, and firmly established, to what specific objects the Clergy Reserves shall be permanently applied.

Resolved.—That the Legislative Council, confiding in the wisdom and justice of His Majesty and the Imperial Parliament, think it expedient and proper humbly to address His Majesty and both Houses of Parliament, representing that the Legislature of this Province has been unable to concur in any measure respecting the Clergy Reserves, and earnestly requesting that the Imperial Parliament will, with as little delay as possible, make such an enactment on the subject as cannot appear to leave any room for doubt or question in regard to the objects to which the proceeds of the Clergy Reserves are to be applied; and that having regard to the present condition and future welfare of this Colony, and maturely considering whatever has been urged, or may be urged, in regard to these Reserves, they will, by some measure which shall be final and unequivocal, make such an appropriation of them as shall appear to be most consistent, with a due regard to religion, to the principles of our Constitution, and to the permanent welfare and tranquility of the Province.

ADDRESS TO THE KING,

*Reported by the Select Committee, and adopted by the
Legislative Council.*

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN :

WE, Your Majesty's dutiful and loyal Subjects, the Legislative Council of Upper Canada, in Provincial Parliament assembled, humbly beg leave to represent to your Majesty, that the provision made for the support of a Protestant Clergy in this Province, by the Statute passed in the thirty-first year of the reign of our late most gracious Sovereign King George the Third, has given rise to questions which after many years agitation of them are still unsettled, notwithstanding the earnest desire of your Majesty, and of your Royal Predecessor, to bring them to a satisfactory issue.

The first occasion for discussing the intention and effect of the Statute referred to was presented by a claim advanced on the part of the Church of Scotland to be allowed to share in the allotment of lands called Clergy Reserves, which claim was grounded upon the language of the Statute, and upon the alleged right of the Church of Scotland to be recognized in the Colonies of the Empire as an established Church. An opinion was not long afterwards publicly expressed that, not merely the Churches of England and

Scotland, but every denomination of Protestants, without distinction, should be allowed to participate in the provision.

It is now many years since these claims and opinions were first advanced, and during the period which has intervened the minds of your Majesty's Subjects in this Colony have been rendered anxious and unsettled, by the hopes which have been raised on the one side, and the apprehensions which have been excited on the other.

In the progress of the discussions to which this important subject has given rise, a new ground has been taken, and a measure has been proposed to us for our concurrence which has for its object the entire destruction of the provision which your Majesty's late Royal Father, and his Parliament, have wisely made for the maintenance of public worship, and the dispensing of religious instruction in this extensive and valuable Colony.

In any measure of this description we feel it impossible to concur; and we are relieved from the apprehension that the Clergy Reserves will be ever appropriated to objects not immediately connected with religion by the very explicit assurance conveyed through the Right Honorable the Secretary of State for the Colonies, that your Majesty can never consent to abandon the interests in question with a view to any objects of temporary and apparent expediency.

We look upon these allotments as the only resource from whence the Ministers of religion can ever derive public support in this Colony. But while we decline to take part in any measure which would deprive the present and future generations of advantages, in their nature inestimable, and which we consider it to be among the first and most sacred duties of a Legislative body to ensure and perpetuate ; we nevertheless deeply regret, that the questions which have been agitated with respect to the Clergy Reserves should continue unsettled ; and we think it is for many reasons, much to be desired, that a speedy and final decision should take place of the questions which have arisen upon the effect of the Statute referred to, and that it should be plainly, certainly and firmly established, to what specific objects the Clergy Reserves shall be permanently applied. Confiding freely in the wisdom and justice of your Majesty and of Parliament, we earnestly hope, that with as little delay as the subject may admit of, such an enactment may be passed as shall not leave any room for doubt or question, in regard to the objects to which the proceeds of the Clergy Reserves are to be applied, and that having regard to the present condition and future welfare of this Colony, and maturely considering whatever has been urged, or may be urged in regard to these Reserves, your Majesty and the Imperial Parliament will by some measure, which shall be final and unequivocal, make such an appropriation of them as shall appear to be most consistent with a due re-

gard to religion, to the principles of our constitution, and to the permanent welfare and tranquillity of the Province.

Being anxious to contribute to this desirable result by every means in our power, we have applied ourselves to this important subject during the present session, for the purpose of presenting in as clear and connected a view as we are able, the questions which have arisen in regard to the Clergy Reserves, the grounds on which they have been raised, and the measures which have been taken in relation to them. We have endeavored to accomplish this in a Report which accompanies this our humble address, and in which we have desired carefully to avoid entering into discussion or argument upon the several questions—reposing with entire confidence upon the wisdom of Your Majesty and Parliament, for a just and right decision upon a dispassionate and impartial consideration of the existing law, and the interests of your Majesty's subjects in this Province.

We beg to renew, upon this occasion, our assurances of entire devotion to your Majesty's person and Government.

APPENDIX

To the Report of the Select Committee to whom was referred the Bill sent up from the House of Assembly, entitled, "An Act for the disposal of the Clergy Reserves in this Province, for the purposes of general Education."

APPENDIX A.

Clauses of the British Statute 31 Geo. 3. ch. 31, which relate to the maintenance and support of a Protestant Clergy.

35. *And whereas* by the above mentioned Act, passed in the fourteenth year of the reign of his present Majesty, it was declared, That the Clergy of the Church of Rome, in the Province of Quebec, might hold, receive, and enjoy, their accustomed dues and rights, with respect to such persons only as should profess the said religion: *Provided nevertheless*, that it should be lawful for his Majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant Clergy within the said Province, as he or they should from time to time think necessary and expedient; *And whereas* by his Majesty's royal instructions, given under his Majesty's royal sign manual on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to Guy Carleton, Esquire, now Lord Dorchester, at that time his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's Province of Quebec, his Majesty was pleased, amongst other things, to direct, "That no incumbent professing the religion of the Church of Rome, appointed to any parish in the said province, should be entitled to receive any tythes for lands or possessions occupied by a Protestant, but that such tythes should be

received by such persons as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec, should appoint, and should be reserved in the hands of his Majesty's Receiver General of the said Province, for the support of a Protestant Clergy in his Majesty's said Province, to be actually resident within the same, and not otherwise, according to such directions as the said Guy Carleton, Esquire, his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province, should receive from his Majesty in that behalf; and that in like manner all growing rents and profits of a vacant benefice should, during such vacancy, be reserved for and applied to the like uses"; *And whereas* his Majesty's pleasure has likewise been signified to the same effect in his Majesty's royal instructions, given in like manner to Sir Frederick Haldimand, Knight of the most Honorable order of the Bath, late his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec; and also in his Majesty's royal instructions, given in like manner to the said right honorable Guy, Lord Dorchester, now his Majesty's Captain-General and Governor-in-Chief in and over his Majesty's said Province of Quebec—*Be it enacted by the authority aforesaid*, that the said declaration and provision contained in the said above mentioned act, and also the said provision so made by his Majesty in consequence thereof, by his instructions before recited, shall remain and continue to be of full force and effect in each of the said two Provinces of Upper Canada and Lower Canada respectively, except in so far as the said declaration or provisions respectively, or any part thereof, shall be expressly varied or repealed by any act or acts which may be passed by the legislative council and assembly of the said Provinces respectively, and assented to by his Majesty, his heirs or successors, under the restriction hereinafter provided.

36. *And whereas* his Majesty has been graciously pleased, by message to both Houses of Parliament, to express his royal desire to be enabled to make a permanent appropriation of lands in the said Provinces, for the support and maintenance of a Protestant

Clergy within the same, in proportion to such lands as have been already granted within the same by his Majesty : *And whereas* his Majesty has been graciously pleased, by his said message, further to signify his royal desire that such provision may be made, with respect to all future grants of land within the said Provinces respectively, as may best conduce to the due and sufficient support and maintenance of a Protestant Clergy within the said Provinces, in proportion to such increase as may happen in the population and cultivation thereof : therefore, for the purpose of more effectually fulfilling his Majesty's gracious intentions, as aforesaid, and of providing for the due execution of the same in all time to come—*Be it enacted by the authority of* *foresaid*, That it shall and may be lawful for his Majesty, his heirs or successors, to authorise the Governor or Lieutenant Governor of each of the said Provinces respectively, or the person administering the Government therein, to make, from and out of the lands of the Crown within such Provinces, such allotment and appropriation of lands, for the support and maintenance of a Protestant Clergy within the same, as may bear a due proportion to the amount of such lands within the same as have at any time been granted by or under the authority of his Majesty : and that whenever any grant of lands within either of the said Provinces shall hereafter be made, by or under the authority of his Majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands for the above mentioned purpose, within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit ; and that no such grant shall be valid or effectual unless the same shall contain a specification of the lands so allotted and appropriated, in respect of the lands to be thereby granted ; and that such lands, so allotted and appropriated, shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

37. *And be it further enacted by the authority aforesaid,* That all and every the rents, profits or emoluments, which may at any time arise from such lands, so allotted and appropriated as aforesaid, shall be applicable solely to the maintenance and support of a Protestant Clergy, within the Province in which the same shall be situated, and to no other use or purpose whatever.

38. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for his Majesty, his Heirs or Successors, to authorize the Governor or Lieutenant Governor of each of the said Provinces respectively, or the person administering the Government therein from time to time, with the advice of such Executive Council as shall have been appointed by his Majesty, his Heirs or Successors, within such Province, for the affairs thereof, to constitute and erect, within every township or parish which now is or hereafter may be formed, constituted or erected, within such Province, one or more parsonage or rectory, or parsonages or rectories, according to the establishment of the Church of England; and from time to time, by an instrument under the great seal of such Province, to endow every such parsonage or rectory with so much or such a part of the lands so allotted and appropriated as aforesaid, in respect of any lands within such township or parish, which shall have been granted subsequent to the commencement of this Act, or of such lands as may have been allotted and appropriated for the same purpose, by or in virtue of any instruction which may be given by his Majesty, in respect of any lands granted by his Majesty before the commencement of this Act, as such Governor, Lieutenant Governor, or person administering the Government, shall, with the advice of the said Executive Council, judge to be expedient under the then existing circumstances of such township or parish.

39. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for his Majesty, his Heirs or Successors, to authorise the Governor, Lieutenant Governor, or person administering the government of each of the said Provinces respec-

tively, to present to every such parsonage or rectory, an Incumbent or Minister of the Church of England, who shall have been duly ordained according to the rites of the said Church, and to supply from time to time such vacancies as may happen therein; and that every person so presented to any such parsonage or rectory, shall hold and enjoy the same, and all rights, profits and emoluments, thereunto belonging or granted, as fully and amply, and in the same manner, and on the same terms and conditions, and liable to the performance of the same duties, as the Incumbent of a parsonage or rectory in England.

40. *Provided always, and be it further enacted by the authority aforesaid,* That every such presentation of an Incumbent or Minister to any such parsonage or rectory, and also the enjoyment of any such parsonage or rectory, and of the rights, profits and emoluments thereof, by any such Incumbent or Minister, shall be subject and liable to all rights of institution, and all other spiritual and ecclesiastical jurisdiction and authority, which have been lawfully granted by his Majesty's royal letters patent to the Bishop of Nova Scotia, or which may hereafter, by his Majesty's royal authority, be lawfully granted or appointed to be administered and executed within the said Provinces, or either of them respectively, by the said Bishop of Nova Scotia, or by any other person or persons, according to the laws and canons of the Church of England, which are lawfully made and received in England.

41. *Provided always, and be it further enacted by the authority aforesaid,* That the several provisions hereinbefore contained, respecting the allotment and appropriation of lands for the support of a Protestant Clergy within the said Provinces, and also respecting the constituting, erecting, and endowing parsonages or rectories within the said Provinces; and also respecting the presentation of Incumbents or Ministers to the same; and also respecting the manner in which such Incumbents or Ministers shall hold and enjoy the same, shall be subject to be varied or repealed by any express provisions for that purpose, contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said

Provinces respectively, and assented to by his Majesty, his Heirs or Successors, under the restriction hereinafter provided.

42. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That whenever any Act or Acts shall be passed by the Legislative Council and Assembly of either of the said Provinces, containing any provisions to vary or repeal the above recited declaration and provisions contained in the said Act passed in the fourteenth year of the reign of his present Majesty; or to vary or repeal the above recited provision contained in his Majesty's royal instructions, given on the third day of January, in the year of our Lord one thousand seven hundred and seventy-five, to the said Guy Carleton, Esquire, now Lord Dorchester; or to vary or repeal the provisions hereinbefore contained for continuing the force and effect of the said declaration and provisions; or to vary or repeal any of the several provisions hereinbefore contained respecting the allotment and appropriation of lands for the support of a Protestant Clergy within the said Provinces; or respecting the constituting, erecting, or endowing parsonages or rectories within the said Provinces; or respecting the presentation of Incumbents or Ministers to the same; or respecting the manner in which such Incumbents or Ministers shall hold and enjoy the same: and also that whenever any Act or Acts shall be so passed, containing any provisions which shall in any manner relate to or affect the enjoyment or exercise of any religious form or mode of worship; or shall impose or create any penalties, burthens, disabilities, or disqualifications, in respect of the same; or shall in any manner relate to or affect the payment, recovery or enjoyment, of any of the accustomed dues or rights hereinbefore mentioned; or shall in any manner relate to the granting, imposing, or recovering any other dues or stipends, or emoluments whatever, to be paid to or for the use of any Minister, Priest, Ecclesiastic or Teacher, according to any religious form or mode of worship, in respect of his said office or function; or shall in any manner relate to or affect the establishment or discipline of the Church of England, amongst the Ministers and members thereof within the said Provinces; or shall in

any manner relate to or affect the King's prerogative touching the granting of waste lands of the Crown within the said Provinces, every such Act or Acts shall, previous to any declaration or signification of the King's assent thereto, be laid before both Houses of Parliament in Great Britain; and that it shall not be lawful for his Majesty, his Heirs or Successors, to signify his or their assent to any such Act or Acts, until thirty days after the same shall have been laid before the said Houses, or to assent to any such Act or Acts, in case either House of Parliament shall, within the said thirty days, address his Majesty, his Heirs or Successors, to withhold his or their assent from such Act or Acts, and that no such Act shall be valid or effectual to any of the said purposes, within either of the said Provinces, unless the Legislative Council and Assembly of such Province shall, in the session in which the same shall have been passed by them, have presented to the Governor, Lieutenant Governor, or person administering the government of such Province, an address or addresses, specifying that such Act contains provisions for some of the said purposes herein before specially described, and desiring that, in order to give effect to the same, such Act should be transmitted to England without delay, for the purpose of being laid before Parliament previous to the signification of his Majesty's assent thereto.



APPENDIX B.

An Act relative to the right of Tithes within this Province. (Passed by the Legislature of Upper Canada.)

[The Royal Assent to this Bill was promulgated by proclamation, bearing date the 20th day of February, 1823.]

WHEREAS notwithstanding his Majesty has been graciously pleased to reserve for the support of a Protestant Clergy in this Province, one-seventh of all lands granted therein, doubts have been suggested that the tithe of the produce of land might still be legally demanded by the Incumbent duly instituted, or Rector of any parish; which doubt it is important to the well doing of this Colony to

remove; be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,' " and by the authority of the same, That no tithes shall be claimed, demanded, or received by any Ecclesiastical Parson, Rector or Vicar, of the Protestant Church within this Province, any law, custom, or usage to the contrary notwithstanding.



APPENDIX C.

AN ACT OF THE IMPERIAL PARLIAMENT, PASSED

ANNO SEPTIMO & OCTAVO.

GEORGE IV. REGIS.

CHAP. LXII.

An Act to authorise the Sale of a part of the Clergy Reserves in the Provinces of Upper and Lower Canada.

[2D JULY, 1827.]

WHEREAS by an Act passed in the thirty-first year of the reign of his late Majesty King George the Third, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,' " it is among other things enacted, that it shall and may be lawful for his Majesty, his Heirs or Successors, to authorise the Governor or Lieutenant Governor of each of the Provinces of Upper Canada and Lower Canada respectively, or the person administering the government therein, to make, from and out of the

lands of the Crown within such Provinces, such allotment and appropriation of lands as therein mentioned for the support and maintenance of a Protestant Clergy within the same; and it was further enacted, that all and every the rents, profits or emoluments which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applicable solely for the maintenance and support of a Protestant Clergy within the Province in which the same should be situated, and to no other purpose whatever: And whereas in pursuance of the said Act such allotments and appropriation of land as aforesaid, have from time to time been reserved for the purpose therein mentioned, which lands are known within the said Provinces by the name of *the Clergy Reserves*: And whereas the said Clergy Reserves have in great part remained waste and unproductive, from the want of capital to be employed in the cultivation thereof; and it is expedient to authorise the sale of certain parts of such Clergy Reserves, to the intent that the monies arising from such sale may be employed in the improvement of the remaining part of the said Clergy Reserves, or otherwise, for the purposes for which the said lands are so reserved as aforesaid: Be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same—that it shall and may be lawful for the Governor and Lieutenant Governor, or Officer administering the government of the said Provinces, or either of them, with the consent of the Executive Council appointed within such Province for the affairs thereof, in pursuance of any instructions which may be issued to such Governor, Lieutenant Governor, or other officer as aforesaid, by his Majesty, through one of his Principal Secretaries of State, to sell, alienate and convey, in fee simple, or for any less estate or interest, a part of the said Clergy Reserves in each of the said Provinces, (not exceeding in either Province one-fourth of the Reserves within such Province,) upon, under, and subject to such conditions, provisoes and regulations, as his Majesty, by any such instructions as aforesaid, shall be pleased to direct and appoint:—*Provided nevertheless*, that the quantity of the said Clergy Reserves

so to be sold as aforesaid, in any one year, in either of the said Provinces, shall not in the whole exceed one hundred thousand acres : *Provided also*, that the monies to arise by, or to be produced from any such sale or sales, shall be paid over to such officer or officers of his Majesty's revenue within the said Provinces respectively, as his Majesty shall be pleased to appoint to receive the same, and shall by such officer or officers be invested in the public funds of the United Kingdom of Great Britain and Ireland, in such manner and form as his Majesty shall from time to time be pleased to direct : *Provided also*, that the dividends and interest accruing from such public funds, so to be purchased, shall be appropriated, applied, and disposed of for the improvement of the remaining part of the said Clergy Reserves, or otherwise for the purposes for which the said lands were so reserved as aforesaid, and for no other purpose whatsoever ; save only so far as it may be necessary to apply the same, or any part thereof, in or towards defraying the expenses of or attendant upon any such sale or sales as aforesaid ; and which appropriations shall be so made in such manner and form, and for such special purposes, as his Majesty from time to time shall approve and direct.

II. *And be it further enacted*, That it shall and may be lawful for the Governor, Lieutenant Governor, or officer administering the government of the said Provinces, with the consent of such Executive Council as aforesaid, in pursuance of any instructions which may in manner aforesaid be issued to him, to give and grant in exchange for any part of the said Clergy Reserves, any lands of and belonging to his Majesty within the said Provinces, of equal value with such Clergy Reserves so to be taken in exchange, or to accept in exchange for any such Clergy Reserves, from any person or persons, any lands of equal value ; and all lands so taken in exchange for any such Clergy Reserves, shall be holden by his Majesty, his Heirs and Successors, in trust for the several purposes to which the said Clergy Reserves are appropriated by the said Act, so passed in the thirty-first year of the reign of his late Majesty King George the Third, or by this present Act.

APPENDIX D.

*Copy of the opinion of His Majesty's Law Officers relative to the
Clergy Reserves; dated 15th November, 1819.*

DOCTOR'S COMMONS, 15th Nov. 1819.

MY LORD,

We are honored with your Lordship's commands of the 14th September last, stating that doubts have arisen how far, under the construction of the Act passed in the 31st year of his present Majesty, (c. 31.) the Dissenting Protestant Ministers resident in Canada have a legal claim to participate in the lands by that Act directed to be reserved as a provision for the support and maintenance of a Protestant Clergy.

And your Lordship is pleased to request, that we would take the same into consideration and report to your Lordship, for the information of the Prince Regent, our opinion, whether the Governor of the Province is either required by the Act, or would be justified in applying the produce of the reserved lands to the maintenance of any other than the Clergy of the Church of England resident in the Province; and in the event of our being of opinion that the Ministers of Dissenting Protestant congregations have a concurrent claim with those of the Church of England, further desiring our opinion, whether, in applying the reserved lands to the endowment of rectories and parsonages, as required by the 38th clause, it is incumbent upon his Majesty to retain a proportion of those lands for the maintenance of the Dissenting Clergy, and as to the proportion in which, under such a construction, the provision is to be assigned to the different classes of Dissenters established within the Province.

We are of opinion, that though the provisions made by 31st Geo. 3. c. 31, § 36 and 42, for the support and maintenance of a Protestant Clergy, are not confined solely to the Clergy of the Church of England, but may be extended also to the Clergy of the Church of Scotland, if there are any such settled in Canada, (as appears to have been admitted in the debate upon the passing of the Act,) yet

that they do not extend to the Dissenting Ministers, since we think the terms, Protestant Clergy, can apply only to Protestant Clergy recognized and established by law.

The 37th section which directs, "that the rents and profits of the lands, &c. shall be applicable solely to the maintenance and support of a Protestant Clergy," does not specify by what authority the rents and profits are to be so applied. Supposing the Governor to be duly authorised by the Act to make such application, we think that he will be justified in applying such rents and profits to the maintenance and support of Clergy of the Church of Scotland, as well as those of the Church of England, but not to the support and maintenance of Ministers of Dissenting Protestant congregations.

With respect to the second question, the 38th clause, "which empowers his Majesty to authorise the Governor to constitute and erect parsonages or rectories according to the establishment of the Church of England;" provides also, "that he may endow every such parsonage or rectory with so much of the lands allotted and appropriated, in respect to any land within such township or parish which shall have been granted, as the Governor, with the advice of the Executive Council, shall judge to be expedient."

Under these terms he might endow any particular parsonage or rectory, with the whole lands allotted and appropriated in that township or parish.

It would be inconsistent with this discretionary power, that any proportion of such lands should be absolutely retained for any other Clergy than those mentioned in that clause, and we think that it is not incumbent on his Majesty so to retain any proportion of such lands.

We have the honor to be, my Lord,

Your Lordship's most obedient humble servants,

(Signed)

CHRIST. ROBINSON,
R. GIFFORD,
J. S. COPLEY.

EARL BATHURST,
&c. &c. &c.

APPENDIX E.

Extract from the Report of the Select Committee of the House of Commons, appointed in 1827, to Report on the Civil Government of Canada.

‘ It now remains for us to lay before the House the result of our inquiries into the Clergy Reserves, which appear, by the statements of the petitioners from Upper Canada, to be the cause of much anxiety and dissatisfaction in that Province. By the Act of 1791, the Governor is directed to make from and out of the Lands of the crown within such Provinces, such allotment and appropriation of lands for the support and maintenance of a Protestant Clergy within the same, as may bear a due proportion to the amount of such lands within the same, as have at any time been granted by or under any authority of his Majesty. And it is further provided, that such lands so allotted and appropriated shall be, as nearly as the circumstances and the nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated ; and shall be, as nearly as the same may be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

‘ The directions thus given, have been strictly carried into effect, and the result is, that the separate portions of land which have been thus reserved, are scattered over the whole of the Districts already granted.

‘ It was no doubt expected by the framers of this Act that, as the other six parts of the land granted were improved and cultivated, the reserved part would produce a rent, and that out of the profits thus realized, an ample fund might be established for the maintenance of a Protestant Clergy. These anticipations, however, have not as yet been, and do not appear likely to be soon realized. Judging, indeed, by all the information the Committee could obtain on this subject, they entertain no doubt that these reserved lands, as they are at present distributed over the country, retard

‘ more than any other circumstance the improvement of the Colony,
‘ lying as they do in detached portions in each township, and inter-
‘ vening between the occupations of actual settlers, who have no
‘ means of cutting roads through the woods and morasses which
‘ thus separate them from their neighbors. The allotment of those
‘ portions of reserved wilderness has, in fact, done much more to
‘ diminish the value of the six parts granted to these settlers, than
‘ the improvement of their allotments has done to encrease the value
‘ of the reserve. This we think must be apparent from the results
‘ of the attempts which have been made to dispose of these lands.
‘ A corporation has been formed within the Province, consisting of
‘ the Clergy of the Church of England, who have been empowered
‘ to grant leases of those lands for a term not exceeding 21 years.
‘ It appears that in the Lower Province alone, the total quantity of
‘ Clergy Reserves is 488,594 acres, of which 75,639 acres are
‘ granted on leases, the terms of which are,—that for every lot of
‘ 200 acres, 8 bushels of wheat or 25s. per annum, shall be paid for
‘ the first 7 years; 16 bushels, or 50s. per annum, shall be paid for
‘ the next 7 years, and 24 bushels, or 75s. per annum, for the last
‘ 7 years. Under these circumstances, the nominal rent of the
‘ Clergy Reserves is £930 per annum. The actual receipt for the
‘ average of the last three years has been only £50 per annum.—
‘ The great difference between the nominal and net receipt is to be
‘ accounted for by the great difficulty of collecting rents, and by
‘ tenants absconding. We are informed also, that the resident
‘ Clergy act as local agents in collecting the rents, that a sum of
‘ £175 had been deducted for the expenses of management, and
‘ that at the date of the last communication on this subject, £250
‘ remained in the hands of the Receiver General, being the gross
‘ produce of the whole revenue of an estate of 954,488 acres.

‘ An attempt has been made to dispose of this estate by sale.—
‘ The Canada Company, established by the Act 6th Geo. 4. chap.
‘ 75, agreed to purchase a large portion of these reserves at a price
‘ to be fixed by Commissioners; 3s. 6d. per acre was the price
‘ estimated, and at this sum an unwillingness was expressed on the
‘ part of the Church to dispose of the lands.

‘ The Government, therefore, have made arrangements with the
‘ Company, and an Act has since been passed authorising the sale
‘ of these lands to any person desiring to purchase them, provided
‘ the quantity sold does not exceed 100,000 acres each year.

‘ As your Committee entertain no doubt that the reservation of
‘ these lands in mortmain is a serious obstacle to the improvement
‘ of the Colony, they think every proper exertion should be made
‘ to place them in the hands of persons who will perform upon them
‘ the duties of settlement, and bring them gradually into cultivation.

‘ That their value, whatever it may be, must be applied to the
‘ the maintenance of a Protestant Clergy, there can be no doubt.
‘ And your Committee regret, that there is no prospect, as far as a
‘ present and succeeding generation is concerned, of their produce
‘ being sufficient for that object, in a country where wholly unim-
‘ proved land is granted in fee for almost nothing to persons willing
‘ to settle on it. It is hardly to be expected that with the excep-
‘ tion of some favored allotments, responsible tenants will be found
‘ who will hold on lease, or that purchasers of such land will be
‘ found at more than a nominal price.

‘ Your Committee, however, are happy to find that the principle
‘ of the progressive sale of these lands has already been sanctioned
‘ by an Act of the British Parliament. They cannot avoid recom-
‘ mending in the strongest manner the propriety of securing for the
‘ future any provision which may be deemed necessary for the re-
‘ ligious wants of the community in those Provinces, by other means
‘ than by a reservation of one-seventh of the land, according to the
‘ enactment of the Act of 1791. They would also observe that
‘ equal objections exist to the reservation of that seventh, which in
‘ practice appears to be reserved for the benefit of the Crown; and
‘ doubtless the time must arrive when these reserved lands will have
‘ acquired a considerable value from the circumstance of their be-
‘ ing surrounded by settled districts, but that value will have been
‘ acquired at the expense of the real interest of this Province, and
‘ will operate to retard that course of general improvement, which

' is the true source of national wealth. Your Committee are of
' opinion therefore, that it may be well for the Government to con-
' sider whether these lands cannot be permanently alienated, sub-
' ject to some fixed moderate reserved payment, (either in money
' or in grain, as may be demanded,) to arise after the first 10 or 15
' years of occupation. They are not prepared to do more than
' offer this suggestion, which appears to them to be worthy of more
' careful investigation than it is in their power to give it; but in
' this or in some such mode, they are fully persuaded the lands thus
' reserved ought without delay to be permanently disposed of.

' To a property at once so large and so unproductive, it appears
' that there are numerous claimants.

' The Act of 1791 directs that the profits arising from this source
' shall be applied to a Protestant Clergy; doubts have arisen
' whether the Act requires the Government to confine them to the
' use of the Church of England only, or to allow the Church of
' Scotland to participate in them. The Law Officers of the Crown
' have given an opinion in favor of the rights of the Church of Scot-
' land to such participation, in which your Committee entirely con-
' cur; but the question has also been raised, whether the Clergy of
' every denomination of Christians, except Roman Catholics, may
' not be included; it is not for your Committee to express an opi-
' nion on the accuracy which the words of the Act legally convey.
' They entertain no doubt, however, that the intention of those
' persons who brought forward the measure in Parliament was to
' endow with Parsonage Houses and Glebe Lands, the Clergy of
' the Church of England, at the discretion of the local Government;
' but with respect to the distribution of the proceeds of the reser-
' ved lands generally, they are of opinion that they sought to reserve
' to the Government the right to apply the money, if they so
' thought fit, to any Protestant Clergy.

' The Committee see little reason to hope that the annual income
' to be derived from this source is likely, within any time to which
' they can look forward, to amount to a sufficient sum to provide
' for the Protestant Clergy of these Provinces; but they ventures

' to press the early consideration of this subject on his Majesty's
 ' Government, with a view to an adjustment that they may be satis-
 ' factory to the Province ; of the principle on which the proceeds
 ' from these lands are hereafter to be applied, and in deciding on
 ' the just and prudent application of these funds, the Government
 ' will necessarily be influenced by the state of the population, as to
 ' religious opinions, at the period when the decision is to be taken.
 ' At present it is certain that the adherents of the Church of Eng-
 ' land constitute but a small minority in the Province of Upper
 ' Canada. On the part of the Scotch Church, claims have been
 ' strongly urged on account of its establishment in the Empire, and
 ' from the number of its adherents in the Province. With regard
 ' to the other religious sects, the Committee have found much diffi-
 ' culty in ascertaining the exact numerical proportions which they
 ' bear one to the other ; but the evidence has led them to believe,
 ' that neither the adherents of the Church of England nor those of
 ' the Church of Scotland form the most numerous religious body
 ' within the Province of Upper Canada.'



APPENDIX F.

ADDRESS

*Of the Legislative Council of Upper Canada, on the subject
 of the Clergy Reserves.*

Extract from the Journal of the Legislative Council, March, 16. 1831.

TO THE KING'S MOST EXCELLENT MAJESTY.

MOST GRACIOUS SOVEREIGN :

WE, your Majesty's dutiful and loyal Subjects, the Legislative
 Council of Upper Canada, in Provincial Parliament assembled,
 humbly beg leave to address ourselves to your Majesty, on a sub-
 ject of the utmost consequence to the future welfare of this Colony.

We observe with great concern the efforts which are making in this Colony to inculcate the opinion, that it is an infringement of liberty to make provision for the support of the Christian religion, by maintaining some form of public worship, even although such a provision should be made (as in this Province it has been made) without imposing a burthen upon any class of the people, and without subjecting to any civil disability those persons who profess a different faith.

As one of the branches of the Legislature of this Colony, we feel it to be our duty to declare our dissent from such a position, as being directly repugnant to principles which have been long and firmly established in every part of the British Empire, and expressly at variance with the original Constitution of this Province, and with the sacred pledge given by your Majesty's late Royal Father when Canada became a British Province.

In the first arrangements made by His late Majesty, and by Parliament, for the Government of Canada, it was their principal care to continue and assure to the inhabitants that provision which the French Government had made for the support of religion, and accordingly the Clergy of the Roman Catholic Church were secured in the enjoyment of all their legal and accustomed rights; and many years afterwards, when the accession of a large English population, particularly in this portion of Canada, rendered it proper to divide the Province, and to make provision for two separate Governments, his Majesty, in a message to Parliament, expressly recommended to them to consider of such provisions as should be necessary for enabling his Majesty to make a *permanent* appropriation of lands in the said Provinces for the support and maintenance of a Protestant Clergy within the same.

Concurring in this recommendation of his Majesty, the Parliament of Great Britain, by the Statute 31st Geo. 3. ch. 31st. made a provision for the support of a Protestant Clergy in this Province in the terms of the royal message; and they secured it by enactments so direct and positive, and so particular in their details, that

there can be no part of the British Empire in which a public provision for the maintenance of religion stands on plainer ground than in the Provinces of Canada.

It was not until after this provision had existed, without complaint or remonstrance, for more than thirty years, that any attempt was made to excite a feeling of dissatisfaction in respect to it. Among the objections which have been urged against it since that period, it has been stated, that the Reserves, by remaining waste, obstruct the settlement of the Province, and that the quantity of the land reserved is excessive in proportion to the object. With respect to the first objection it has always been exaggerated, and the reasoning in support of it was daily becoming weaker in consequence of the occupation of the reserves by Lessees, even before the measures which have lately been taken for their sale, under the authority of a recent Act of the Imperial Parliament.

Since they have been thus placed in a course of gradual alienation there not only remains no fair objection of that kind, but it is in reality a great benefit to the country, that respectable emigrants coming at this late period from Europe are enabled, by the opportunity of purchasing these Clergy Reserves, to obtain lands in eligible situations, upon convenient and moderate terms.

With regard to the argument that the allotment for religious purposes is excessive, and disproportioned to the object—it is easy to set at rest any question on that point, and to afford the most conclusive assurance that nothing more than an adequate provision is desired. This Province is divided into Townships, each of which contains about one hundred square miles, and in many of which there are already populous villages, besides the agricultural population generally dispersed over the whole surface.

It can easily be determined whether the support of two Clergymen of the Church of England, or of any given number beyond that, would form a reasonable provision for the religious wants of such a subdivision of the country, having in view what must be the future condition of this colony.

There can be as little difficulty in determining what stipend would assure a barely adequate maintenance to such clergymen ; and if Parliament were to place at the disposal of his Majesty the surplus of the endowment in any township that may remain after this adequate maintenance shall have been secured, such a measure must necessarily remove the apprehension of those persons who conceive the provision to be improvident and lavish.

It is not our intention, on this occasion, to express any opinion respecting the claims which the Church of Scotland has preferred to a participation, being content that it rests with your Majesty and with Parliament to decide upon it.

We regret that it was ever thought advisable to agitate that question in this Colony, where it could not be determined ; and we earnestly hope, for the sake of religion itself, that it may be speedily set at rest by a final decision. In the mean time, we cannot forbear to express our conviction that, the rulers of the Church of Scotland are more sincerely attached to the principles of Christianity than to desire that the only permanent provision for religious instruction which exists in this country should be entirely abolished, because it has appeared doubtful whether that particular church has a right to share in it.

They must be aware, that it is not with those feelings that the support of their venerable establishment is regarded in Scotland, by their fellow subjects of other denominations ; and we do them the justice to believe that they would be forward to disavow any such sentiments in regard to this Province.

We find that the necessity of providing by public aid for the education of the various classes in society is felt and acted upon in this Province as well as in other countries, and we can by no means admit that their religious instruction can be treated as a matter of less important concern, and one that may with greater safety be left to the precarious liberality of individuals.

On the contrary, when we consider that the security of life and property, and all that is protected by the due administration of public justice, depends upon the religious obligation which the mind attaches to an oath, we feel that the best interests of society are involved in the maintenance of that provision which we earnestly desire to preserve.

We beg leave further to represent to your Majesty, that within the forty years which have elapsed since this endowment was allotted, the population of Upper Canada has increased from ten thousand, to two hundred and twenty thousand souls; the Province comprises within its present organized Districts a country not less in extent than the Kingdom of England and Wales; the fertility of the soil and the excellence of the climate are favorable to the most rapid advancement in population; and we persuade ourselves that your Majesty will not consider it expedient or right, that the millions of people who are to inhabit this country at no very remote period, shall be left dependant upon chance for the religious instruction they are to receive.

On the contrary, we fully trust that your Majesty and the Imperial Parliament, maintaining one of the first principles of the British Constitution, will preserve to the inhabitants of Upper Canada the advantage of an adequate and permanent provision for the support of public worship, convinced that by such means the best security will be provided for the moral conduct of the people, and for the peace and happiness of society.

(Signed,)

JOHN B. ROBINSON,

SPEAKER.

Legislative Council Chamber,

16th March, 1831.

APPENDIX G.

MESSAGE

From his Excellency the Lieutenant Governor, relative to the Clergy Reserves in this Province; and copy of Bill for re-investing the same in his Majesty.

(Brought into the House of Assembly by the Attorney General.)

(Copy.)

J. COLBORNE.

The Lieutenant Governor has received his Majesty's commands to make the following communication to the House of Assembly, in reference to the lands, which, in pursuance of the constitutional Act of this Province, have been set apart for the support and maintenance of a Protestant Clergy.

The representations which have at different times been made to his Majesty and his Royal Predecessors, of the prejudice sustained by his faithful subjects in this Province, from the appropriation of the Clergy Reserves, have engaged his Majesty's most attentive consideration.

His Majesty has, with no less anxiety, considered how far such an appropriation of territory is conducive, either to the temporal welfare of the ministers of religion in this Province, or to their spiritual influence. Bound no less by his personal feelings, than by the sacred obligations of that station to which Providence has called him, to watch over the interests of all the Protestant Churches within his dominions, his Majesty could never consent to abandon those interests with a view to any objects of temporary and apparent expediency.

It has therefore been with peculiar satisfaction that in the result of his inquiries into this subject, his Majesty has found that the changes sought for by so large a proportion of the inhabitants of

this Province, may be carried into effect without sacrificing the just claims of the established Churches of England and Scotland. The waste lands which have been set apart as a provision for the Clergy of those venerable bodies, have hitherto yielded no disposable revenue. The period at which they might reasonably be expected to become more productive is still remote. His Majesty has solid grounds for entertaining the hope that before the arrival of that period, it may be found practicable to afford the Clergy of those Churches, such a reasonable and moderate provision as may be necessary for enabling them properly to discharge their sacred functions.

His Majesty, therefore, invites the House of Assembly of Upper Canada, to consider how the powers given to the Provincial Legislature by the Constitutional Act, to vary or repeal this part of its provisions, can be called into exercise most advantageously, for the spiritual and temporal interests of his Majesty's faithful subjects in this Province.

GOVERNMENT HOUSE, }
25th January, 1832. }

WHEREAS, by an Act passed in the Parliament of Great Britain, in the thirty-first year of the reign of his late Majesty King George the Third, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province," it was amongst other things enacted, that it should and might be lawful for his said late Majesty, his heirs and successors, to authorise the Governor or Lieutenant Governor of each of the said Provinces, respectively, or the person administering the government therein, to make, from and out of the lands of the Crown within such Provinces, such allotment and appropriation of the lands for the support and maintenance of a Protestant Clergy within the same, as may bear a

due proportion to the amount of such lands within the same as had at any time been granted by or under the authority of his said late Majesty, and that upon any grant of land within either of the said Provinces, which should hereafter be made by or under the authority of his Majesty, his heirs or successors, there should at the same time be made in respect of the same, a proportionable allotment and appropriation of land for the above mentioned purpose, within the township or parish to which such lands so to be granted should appertain or be annexed, or as nearly adjacent thereto as circumstances would admit; and that no such grant should be valid or effectual, unless the same should contain a specification of the lands so allotted or appropriated in respect of the land to be thereby granted; and that such land so allotted and appropriated should be, as nearly as the circumstances and nature of the case would admit, of the like quality as the lands in respect of which the said land should be so allotted and appropriated, and should be as nearly as the same could be estimated at the time of making such grant equal in value to the seventh part of the lands so granted. And it was thereby further enacted, that all and every the rents, profits or emoluments, which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applicable solely to the maintenance of a Protestant Clergy within the Province in which the same should be situated, and to no other use or purpose whatever. And whereas, various parts of the said Clergy Reserves within this Province, have been demised by letters patent, under the Great Seal of this Province, to divers persons for terms of years which have not yet expired. And whereas, by a certain Act of Parliament of the United Kingdom of Great Britain and Ireland, passed in the seventh and eighth years of the reign of his late Majesty King George the Fourth, entitled, "An Act to authorise the sale of a part of the Clergy Reserves in the Provinces of Upper and Lower Canada," it is enacted, that it shall and may be lawful for the Governor, Lieutenant Governor, or officer administering the government of the said Provinces, or either of them, with consent of the Executive Council appointed within such Province for the

affairs thereof, in pursuance of any instructions which may be issued to such Governor, Lieutenant Governor, or other officer as aforesaid, by his Majesty, through one of his Principal Secretary's of State, to sell, alienate and convey, in fee simple, or for any less estate or interest, a part of the said Clergy Reserves in each of the said Provinces, not exceeding in either Province one-fourth of the reserves within such Province, upon, under and subject to such conditions, provisoes and regulations, as his Majesty by any such instruction as aforesaid, shall be pleased to direct and appoint;— Provided nevertheless, that the quantity of the said Clergy Reserves so to be sold as aforesaid, in any one year in either of the said Provinces, shall not in the whole exceed one hundred thousand acres: Provided also, that the monies to arise by, or to be produced from any such sale or sales, shall be paid over to such officer or officers of his Majesty's revenue, within the said Province respectively, as his Majesty shall be pleased to appoint to receive the same, and shall, by such officer or officers, be invested in the public funds of the United Kingdom of Great Britain and Ireland, in such manner and form as his Majesty shall from time to time be pleased to direct; provided also, that the dividends and interest accruing from such public funds so to be purchased, shall be appropriated, applied and disposed of for the improvement of the remaining part of the said Clergy Reserves, or otherwise for the purposes for which the said lands were reserved, as aforesaid, and for no other purpose whatever, save only so far as it may be necessary to apply the same or any part thereof, in or towards defraying the expenses of, or attendant upon any such sale or sales as aforesaid, and which appropriations shall be so made in such manner and form, and for such special purposes, as his Majesty from time to time shall approve and direct. And whereas, in pursuance of the said last recited Act, the Lieutenant Governor for the time being, of this Province, with the consent of the Executive Council, hath, in pursuance of instructions for that purpose, issued by his late Majesty King George the Fourth, through one of his Principal Secretaries of State, effected sales of divers parts of the Clergy Reserves: And

whereas, by a message to both Houses of the Provincial Legislature, bearing date the 25th day of January, 1832, his Excellency Major General Sir John Colborne, K. C. B. hath signified to both Houses of the Legislature of this Province, his Majesty's most gracious invitation to consider how far the powers given to the Provincial Legislature by the constitutional Act, to vary or repeal that part of its provisions which relate to the lands allotted and appropriated in this Province, to the support and maintenance of a Protestant Clergy, could be called into exercise for the spiritual and temporal interests of his Majesty's faithful subjects in this Province. Now, therefore, be it enacted, &c. That so much as is hereinbefore recited of the said Act of the British Parliament, so passed as aforesaid, in the thirty-first year of the reign of his late Majesty King George the Third, shall be, and the same is hereby repealed.

And be it, &c. That from henceforth no grant heretofore made by, or on behalf of his Majesty, or any of his royal predecessors, of any lands situated within this Province, shall be or be deemed invalid or ineffectual, or be liable to be impeached, vacated or set aside, by reason that any such grant did not contain a specification of the lands allotted and appropriated for the support and maintenance of a Protestant Clergy, in respect of the lands thereby granted; but every grant of land within this Province, heretofore made by, or on behalf of his Majesty or of any of his royal predecessors, in which any specifications made had been omitted, shall henceforth be and shall be deemed and taken from the day of the date thereof, to have been as valid and effectual in the law as though such grants had contained the specification aforesaid.

And be it, &c. That all the lands heretofore appropriated within this Province, for the support and maintenance of a Protestant Clergy, now remaining unsold, shall be and they are hereby declared to be vested in his Majesty, his Heirs and Successors, as of his and their estate, absolutely discharged from all trusts for the benefit of a Protestant Clergy, and of and from all and every the claims and demands of such Clergy, upon or in respect of the same.

Provided always, and be it, &c. That nothing herein contained shall take away or affect, or be construed to take away or affect the right or title of any person or persons, in, or to any lands which may by any such person or persons be holden or enjoyed, or which any such person or persons may claim to hold or enjoy, by virtue of any sale, alienation, conveyance or contract, made, executed or entered into, in pursuance of the above recited Act of Parliament, passed in the seventh and eighth year of his said late Majesty's reign; but that every such sale, alienation or contract, shall be as valid and effectual in the law, and shall henceforth have and continue to have the same force and effect as if this present Act had not been made; provided also, that nothing herein contained shall extend, or be construed to extend to render invalid or ineffectual, any lease or demise of any part of the said Reserves so passed under the great seal of this Province, as aforesaid.

APPENDIX H.

*Bill for the Disposal of the Clergy Reserves in this Province,
for the purpose of Education.*

[Upon which this Committee has been instructed to report.—

Passed by the Assembly in 1835, and sent up to the
Legislative Council.]

WHEREAS by an Act passed in the thirty-first year of the reign of his late Majesty King George the Third, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the

said Province," it was enacted that it should and might be lawful for his Majesty, his heirs and successors, to authorise the Governor or Lieutenant Governor, of each of the Provinces therein-before named respectively, or the person administering the Government therein, to make, from and out of the lands of the crown within such Provinces, such allotment and appropriation of lands for the support and maintenance of a Protestant Clergy within the same, as might bear a due proportion to the amount of such lands within the same as have at any time been granted by or under the authority of his Majesty; and that whenever any grant of lands, within either of the said Provinces, should thereafter be made by or under the authority of his Majesty, his heirs or successors, there should at the same time be made in respect of the same, a proportionable allotment and appropriation of lands for the above mentioned purpose, within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances would admit; and that no such grant should be valid and effectual unless the same should contain a specification of the lands so allotted and appropriated in respect of the lands to be thereby granted; and that such lands so allotted and appropriated should be, as nearly as the circumstances and nature of the case would admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and should be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted: *And whereas* it was, in and by the said in part recited act, further enacted, that all and every the rents, profits or emoluments, which might at any time arise from such lands so allotted and appropriated as aforesaid, should be applicable solely to the maintenance and support of a Protestant Clergy within the Province in which the same should be situated, and to no other use or purpose whatever: *And whereas*, in pursuance of the said Act, such proportionable allotments and appropriations of lands as aforesaid, have from time to time been reserved for the purposes therein mentioned; which lands are known by the name of "the

Clergy Reserves": *And whereas also*, the Bishop and Clergy of the Church of England pretend, contrary to the spirit and meaning of the said in part recited Act, to have an exclusive right to the said Reserves, and to the rents, issues and profits, arising from them, although, notwithstanding such pretentions, and the liberal pecuniary aid annually enjoyed by the Ministers thereof from a benevolent Society in England, the number of that Church is exceedingly small, when compared to the number of some other sects of Protestants in this Province: *And whereas* the continuance of those lands, and the said pretentions of the said Bishop and Clergy to an unjust monopoly of them, are exceedingly injurious to the interests, and offensive to the feelings of a vast majority of the inhabitants of this Province, and to the harmony of the Christian community: *And whereas* it is wisely provided by the said Act, section 41st, "that the several provisions herein before contained, respecting the allotment and appropriation of lands for the support of a Protestant Clergy within the said Provinces; and also respecting the constituting, erecting and endowing, parsonages or rectories within the said Provinces; and also respecting the presentation of Incumbents or Ministers to the same; and also respecting the manner in which such Incumbents or Ministers shall hold and enjoy the same," shall be subject to be varied or repealed by any express provisions for that purpose contained in any Act or Acts which may be passed by the Legislative Council and Assembly of the said Provinces respectively, and assented to by his Majesty, his Heirs or Successors: *And whereas* it is inexpedient and unwise in this Province, to have any one or more profession, denomination, or religious societies, anywise connected with the State, or receiving any endowment, pension, sinecure or salary, for their Ministers or Clergy, from the proceeds of the Clergy Reserves, or the public revenues of the State; but that it is expedient they should severally depend for their support upon the voluntary contributions of the people, and that the said Reserves should be sold for the purposes of general Education: *And whereas* by another Act of Parliament of the United Kingdom of

Great Britain and Ireland, passed in the eighth year of the reign of his late Majesty, entitled, "An Act to authorise the sale of a part of the Clergy Reserves in the Provinces of Upper and Lower Canada," it was enacted, that a part of the said Clergy Reserves (not exceeding one-fourth of the said Reserves in this Province) should be sold, in the manner, and subject to the conditions and limitations in said last mentioned Act contained: *And whereas* it is highly expedient and necessary to provide by law for the sale or leasing of so much of the said Reserves, whether converted into parsonages or rectories, or what are called glebes, as have not been sold under the authority of the last mentioned Act, or which are not now under sale: *And whereas* it is also expedient to provide for the sale of such of the aforesaid lands that are now under lease, as soon as such lease shall expire: *And whereas* it is just and expedient that the proceeds arising from the sale of the said land, as well such portions as have already been sold as those to be hereafter sold, and also arising from such as have been or hereafter shall be leased, should be applicable and appropriated to the support of general Education, by which all his Majesty's subjects may equally participate: *And whereas* it is inexpedient that such reservations should hereafter continue to be made.—*Be it, &c.* That so much of the said Act, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of his Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" as is above recited, be, and the same is hereby repealed.

2. *And be it, &c.* That the persons hereafter appointed, and their successors duly appointed, agreeably to the provisions of this act, shall be, and are hereby declared to be Commissioners, for taking charge of and superintending, selling, or leasing the said Reserves, and for the collecting the money arising from such sales or leases;—and also for collecting the money now due, or hereafter becoming due, on such as have heretofore been sold and leased;

and who shall be known by the names of "Commissioners of Clergy Reseves;" and it shall be the duty of the several Commissioners for their respective districts, to collect all such sum or sums as may be due as aforesaid, for the purchase or lease as aforesaid, for any lot or parcel of the said land situate in his district; and who is hereby authorised to use the same means to recover the rent due on any of the said leased Reserves, that a landlord by law now has, and who shall pay over, once in every three months, all such sums as may come into his hands, by virtue of his office, to the Receiver General of the Province, for the purposes hereafter provided by this act, except the sum of five per cent. as a compensation for his services, responsibility, &c., together with the expense of advertising the sales of lands in newspapers; as also such sum as may be allowed to the collectors and clerks of the several townships of the district, as a compensation for their services imposed upon them by this act; and it shall be the duty of the respective Commissioners to record in a book to be kept for that purpose, all such sum or sums as he may receive and transmit as aforesaid, as well as all proceedings connected with their duties and office as Commissioners as aforesaid, which book shall be carefully preserved and kept by such Commissioners, and handed over to their successors in office, a copy of which they shall make out and transmit to the Governor, Lieutenant Governor, or person administering the government, on the first day of November in each and every year during their continuance in office, to be by him laid before the Legislature.

3. *And be it, &c.* That it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of this Province, for the time being, to cause to be made out a list of the said Reserves, in the several districts, contained in each township in the same, in this Province, and which list shall shew distinctly the situation of the several lots or parts of lots whether sold or not—if sold, at what price—and how much has been paid—what remains yet to be paid;—if leased, the terms of the lease, together with its date, and time it will expire;—as also

what is due and unpaid on said lease—and also the applications that may have been made, the name or names of the applicant or applicants, with their place of residence, to purchase or lease any of the said Reserves which have not yet been sold or leased, and which list shall, with the least possible delay, be, after the passing of this act, transmitted to the Clerk of the Peace of the respective districts, to be by him handed over to the Commissioners of the said districts.

4. *And be it, &c.* That the said Commissioners for the respective districts shall, immediately upon the receipt of such list, give public notice, by putting up a notice in three of the most public places in the several townships in which there are any lands as aforesaid, which have been applied for and mentioned in the list as aforesaid, but which has not either been sold or leased, at least for thirty days, stating that they will, on a certain day and hour, and at a certain place, meet the township Clerk and the Collector for the township, whose duty it shall be, to meet the said Commissioners at such time and place, for the purpose of hearing and determining upon the several claims for the several lots or parcels of land as aforesaid, and the said Commissioner for any district, together with such township Clerk and Collector, shall form a Board to hear and determine upon all claims as aforesaid, that may be brought before them, and may adjourn from time to time, as they may deem expedient; and it shall be lawful for the said Commissioner to issue a summons for the attendance of any witness or witnesses that may be desired by any party claiming any lot or parcel of land as aforesaid; and such Board to hear such witnesses upon oath, as may be produced, which oath the said Commissioner is hereby authorised to administer, which shall be in the form of the schedule to this Act, marked C; and also may hear the party or parties either under oath or otherwise, as they may deem expedient: and in case the said township Clerk or Collector shall neglect or refuse to attend and perform the duties imposed upon them by this Act, the said Commissioner is hereby authoris-

ed and empowered to summons one or more disinterested freeholders, as occasion may require, to supply the place, and act instead of the said township Clerk or Collector, for all the purposes of this Act.

5. *And be it, &c.* That it shall and may be lawful for any person or persons who may have made application to purchase or lease any land in said Township, to prefer his, her or their claim to the said Board, and sustain the same by such proof as he may be in possession of, and desire to adduce.

6. *And be it, &c.* That the several Township Clerks and Collectors, or such person or persons who perform the duties required of the Township Clerks and Collectors by this Act, in case of their refusal, as is herebefore provided, shall be entitled to receive the sum of five shillings for each and every day which they may necessarily be employed in performing the said duties, which sum the Commissioner is hereby authorised and required to pay out of any monies that may come into his hands, by virtue of his office.

7. *And be it, &c.* That it shall and may be lawful for the said Board to hear and determine upon all such matters as aforesaid, as may be brought before them, and decide the same according to the best of their ability and judgment; and in all cases where they find that according to equity and good conscience, that any person is entitled to a lease for any lot or parcel of land as aforesaid, or purchase at private sale, as is provided by this Act, they shall record the same in the book to be kept as aforesaid, together with the amount that is found due and payable as back rent, in case it is to be leased, on the said lot or parcel of land; and it shall and may be lawful for the said Commissioner of any District, and he is hereby required, as soon as may be after the said Board for any Township have finished their sitting, to proceed to examine and value all such lands as may have been decided to be liable to be purchased as aforesaid, by any person or persons, and shall record his opinion of the value of the several lots or tracts of lands in said

book ; and also transmit or deliver to the respective persons having a claim, and whose claim has been confirmed by said Board, on any land as aforesaid.

8. *And be it, &c.* That it shall and may be lawful for each person preferring such claim, to pay, or cause to be paid, the first instalment on such land, within the space of six months after receiving such statement or valuation ; which instalment shall be in proportion to the whole amount, according to the ratio hereinafter provided : *Provided always*, that if such person neglects or refuses to pay such instalment within the time aforesaid, then, and in that case, the said lands shall be sold at public auction, in the same way and manner as other lands are provided to be sold by this Act.

9. *And be it, &c.* That the Commissioners for their respective Districts shall meet the Collector and Township Clerk in the several Townships, and form Boards in regular rotation, giving due notice as aforesaid, beginning with the Township containing the greatest number of souls ; and no Board shall continue its sittings more than one week, from the commencement of such sitting, in any one Township ; and that in all cases where a Township is not entitled to hold a Township meeting, it shall be taken and considered for the purposes of this Act, to belong to the same Township to which it belongs for the purposes of Township meetings.

10. *And be it, &c.* That it shall and may be lawful for the several Commissioners, after forming Boards in the several Townships, and after performing and completing the duties imposed upon them by the former provisions of this Act, and they are hereby required to make out a full and fair list of such lands as remain undisposed of, and record the same in the book as aforesaid ; from which list they shall select annually, such lots or parcels as in their discretion they shall deem expedient, not exceeding one quarter of what so remains in any one Township, and expose the same for sale at public auction, to the highest bidder, in the Township in which the land is situated, after first giving public notice of the time and place

of sale, and the particular lots or parcels of land to be sold, by putting up a notice in three of the most public places in the Township; and also causing it to be published in three public newspapers in most extensive circulation in the District, at least six months previous to said sale, and renew their sale every twelve months from the date of their first sale, until the whole be disposed of: *Provided always*, that such lands shall be put up at such upset price as shall be previously approved of and decided upon by the Board of the said Township.

11. *And be it, &c.* That in case any lot so exposed for sale shall not be sold, or shall be bid off by any person, and the conditions of the sale shall afterwards not be complied with, such lot shall be taken and considered as part of the land yet remaining to be sold, and offered again for sale at the next annual sale, and be subject to the same terms, and liable to be sold in the same way and manner, as though it had never been so exposed or offered for sale.

12. *And be it, &c.* That the conditions of all sales of lands sold under the provisions of this Act, shall be one-tenth down, and the remainder in nine equal annual instalments, with interest: *Provided always*, that in case the Board of any Township shall think it right and expedient, they may allow any person a reasonable time to pay the first instalment on any land, which they may find him entitled to purchase at private sale, not exceeding, however, the term of six months, free of all charge: *Provided also*, that any purchaser, upon paying off the whole of the purchase money within six months after such sale and purchase, shall be entitled to a deduction of five pounds, upon every hundred pounds, and so in proportion for any greater or less sum for the nine last instalments.

13. *And be it, &c.* That when and so often as any lease for any of the reserves which are now given, or hereafter to be given, shall expire, the Commissioners for the District in which the same are situated, shall proceed to sell the same, in the same way and manner as is provided by this Act for the public sale of other lands:

Provided always, that from and after the first four annual sales, all the lands in any township liable to be sold, shall be exposed for sale at every annual sale, until the whole be sold: *Provided always*, that if the lessee, or any one claiming under him, shall desire again to renew his lease, or become the purchaser of any particular lot, or part of a lot, tract or parcel of said Reserves, and shall make the same known to the Commissioner for the District for the time being, it shall be the duty of said Commissioner (in case such person desires to purchase) to examine and appraise the said lot, tract or parcel of land, and allow such person to purchase the same, on the same terms and conditions that persons are allowed to purchase at private sale under the provisions of this Act: *Provided always*, that all such land shall be valued at what it would be worth at the time of said valuation, in a state of nature, and no more; or such Commissioner shall grant a lease for the same, as the case may be.

14. *And be it, &c.* That the following persons shall be, and are hereby declared to be the Commissioners for the respective Districts, who shall continue to be such until other Commissioners shall be appointed, as is hereinafter provided, viz:

For the Ottawa District,—Charles Waters.

For the Eastern District,—Peter Shaver.

For the Johnstown District,—Matthew M. Howard.

For the Bathurst District,—Donald Fraser.

For the Midland District,—Peter Perry.

For the Newcastle District,—Ebenezer Perry.

For the Home District,—Jesse Ketchum.

For the Gore District,—Caleb Hopkins.

For the Niagara District,—William Woodruff.

For the London District,—Charles Duncombe,

For the Western District,—Francis Baby.

For the Prince Edward District,—John Roblin.

Provided always, That in case any one or more of the said Commissioners, appointed under and by the provisions of this Act, shall refuse to serve as such, or shall die, or remove out of the District for which he is appointed, it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the Government, to appoint some other person instead thereof.

15. *And be it, &c.* That it shall and may be lawful for the House of Commons of this Province, at any Session of the Legislature after the passing of this Act, to appoint by vote of the said House, such person or persons as the said House may deem expedient, instead of any Commissioner or Commissioners that may have been appointed according to the provisions of this Act.

16. *And be it, &c.* That it shall be the duty of the Governor, Lieutenant Governor, or person administering the Government for the time being, to notify the Clerk of the Peace of the respective Districts, of any Commissioners appointed under the provisions of this Act, within thirty days after such appointment; and it shall be the duty of the Clerk of the Peace for any District receiving such notice, to acquaint such person of his appointment without delay, and request such person to come forward and qualify himself for his office according to law; and in case such person does not qualify himself for the duties of his office, in the way and manner provided in this Act, within the space of thirty days, such Clerk of the Peace shall, without loss of time, communicate the circumstance to the Governor, Lieutenant Governor, or person administering the Government for the time being, in order to the appointing another person in their stead.

17. *And be it, &c.* That no Commissioner appointed under the provisions of this Act, shall enter upon the duties of his office until he has taken and subscribed the oath in the schedule to this Act, marked A., which he is hereby required to do within the space of thirty days after receiving notice of his appointment, before the Clerk of the District, which oath the said Clerk is

hereby authorised to administer to such Commissioner, and also enter into bonds for the due performance of the duties of his office, of one thousand pounds, with two good and sufficient sureties, of five hundred pounds each, to be approved by said Clerk, which bond shall be in the form of the schedule to this Act, marked B., which bond shall be kept in the office of the Clerk of the Peace; and it shall and may be lawful for any Commissioner so appointed and qualified for any District, (except those Commissioners appointed and named in this Act) and he is hereby authorised and required, to proceed forthwith to demand and receive from his predecessor, his heirs, executors or administrators, all such papers and documents in his or their possession, relating to his office as said Commissioner; and upon the receipt of the same, to transmit a true and correct copy of all such records as relate to the transactions of said Commissioner in the duties of his office, to the Governor, Lieutenant Governor, or person administering the Government, in order that the same may be laid before the Legislature; and in case such Commissioner, or his heirs, executors or administrators, shall refuse to deliver over such papers to such Commissioner as aforesaid, then such Commissioner shall report the same to the Governor, Lieutenant Governor, or person administering the Government, in order to the prosecuting of any the bonds of such Commissioner.

18. *And be it, &c.* That it shall and may be lawful for any Commissioner, having sold any lot or parcel of land upon the credit and on the terms aforesaid, to exchange with such purchaser a counterpart of a voucher under hand and seal, according to the form to this Act annexed.

19. *And be it, &c.* That upon payment of the purchase money, it shall and may be lawful for the said purchaser, his heirs, executors, administrators or assigns, to ask, and for the Commissioner or his successor in office to give a certificate, endorsed upon the back of the said vouchers, that the terms of the sale have been fulfilled on such lot, parcel, or tract of land.

20. *And be it, &c.* That the money received from time to time by the Commissioner under this Act, shall be paid into the hands of the Receiver General of this Province, to be applied to the purposes of this Act, and no other.

21. *And be it, &c.* That upon producing the Commissioner's certificate as aforesaid, with the petition for a deed to the Lieutenant Governor in Council, it shall and may be lawful for the Governor in Council to make an order for a deed to issue to such person, with the least possible delay, and without any fees or other charge therefor.

22. *And be it, &c.* That every Commissioner receiving monies by sales or otherwise, under this Act, shall, and he is hereby required, immediately, or once in at least three months, to transmit the same to his Majesty's Receiver General, who shall annually prepare an account thereof for the Governor, Lieutenant Governor, or person administering the Government of this Province for the time being, to be by him laid before the Provincial Legislature.

23. *And be it, &c.* That the monies raised and paid into the hands of the said Receiver General as aforesaid, shall be by him credited as a fund under this Act for the support and promotion of Education, in such manner and proportion as shall hereafter be provided by any law of this Province; and that the said fund shall be applied to the said purposes, and to no other purposes whatsoever.

24. *And be it, &c.* That the Commissioner shall exchange with the said purchaser, a counterpart of a voucher, under hand and seal, in the form following :—

I, A. B., Commissioner of the ——— District, under and by virtue of an Act passed ———, entitled, "An Act," &c. [*here insert the title of this Act*] have, for the consideration hereinafter mentioned, sold by public auction, [*or otherwise, as the case may be*] to C. D. of ———, in the ——— District, the Clergy Re-

serve known as lot number ———, [*or, as the case may be*] in the ——— concession, in the Township of ———, in consideration whereof, the said C. D. hath hereby undertaken to pay me, and my successors, the sum of £———, in the manner following :—

Sealed with my seal, and dated at ——— this ——— day of ———.
WITNESS,

25. *And be it, &c.* That in case any purchaser of a lot, tract, or parcel of land as aforesaid, under this Act, shall neglect to comply with the conditions of the sale, and thereby forfeit his claim thereto, and shall not within six months from the time when any of the said payments become due, pay all money due, with interest on the same from the time it became due, it shall and may be lawful for the Commissioner, and he is hereby required, to proceed again to the sale of such lot, in the same manner as if it had never been put up at auction; and every purchaser thereof at any second or subsequent sale from forfeiture as aforesaid, shall, and he is hereby empowered, to proceed against any person or persons withholding the peaceable possession from him, in the same manner and form as a for a forcible detainer by the laws of this Province.

APPENDIX I.

*Extract of a Letter from R. W. HAY, Esquire, to
the Honorable J. K. STEWART, dated Downing-
Street, 23rd April, 1834.*

“IN consequence of the withdrawal of the aid heretofore received
“from Parliament, the Society for the Propagation of the Gospel
“appears to have found it impossible to maintain its former es-
“tablishments; and it announced last year that in Upper Canada,
“where Government had been able to provide an annual payment
“of £100 to each Missionary at present employed, the present
“average being £200, the allowances of the Society to its Mis-
“sionaries would be discontinued after the year 1834; and that in
“all the other North American Colonies they would be reduced
“by one-half, after the year 1835.”

